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PRELIMINARY SUPPLEMENT PART I
TO
VOLUME XXV. NUMBER 1.

Massachusetts Law Quarterly

JANUARY - MARCH, 1940

FIFTEENTH REPORT
OF THE
Judicial Council of Massachusetts
December, 1939

WITH TABLES OF CONTENTS OF ALL PREVIOUS REPORTS SINCE 1924 AND A LIST OF REPORTS OF COMMITTEES, COMMISSIONS AND OTHER MATERIAL RELATING TO THE HISTORY OF THE JUDICIAL SYSTEM SINCE 1780

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Public Document No. 144

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Publication of this Document approved by the Commission on Administration and Finance

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Summary of the Work of the Various Courts and Statistical Tables

The Commonwealth of Massachusetts

DECEMBER, 1939.

To His Excellency, LEVERETT SALTONSTALL,

Governor of Massachusetts.

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the fifteenth annual report of the Judicial Council.

FRANK J. DONAHUE, *Chairman.*
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ACTS OF 1924, CHAPTER 244

As amended by St. 1927, c. 923, and St. 1930, c. 142
Now appearing as G. L. (Ter. Ed.) Ch. 221, §§ 34A–34C

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections—*Section 34A.* There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him: the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of thirty-five hundred dollars.

MEMBERS OF THE COUNCIL

FRANK J. DONAHUE of Boston, *Chairman*

JOHN E. FENTON of Lawrence
JOHN V. PHELAN of Lynn
WILFRED BOLSTER of Wellesley
CHARLES L. HIBBARD of Pittsfield
JOHN AUGUSTINE DALY of Cambridge
CHARLES A. McCARRON of Newton
FREDERIC J. MULDOON of Winthrop
NATHAN P. AVERY of Holyoke

FRANK W. GRINNELL, *Secretary*, 60 State St., Boston

FIFTEENTH REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

To His Excellency
LEVERETT SALTONSTALL
Governor of Massachusetts

The Judicial Council was created by St. 1924, Chapter 244 (*See copy printed on opposite page*), "for the continuous study of the organization, rules and methods of procedure and practice of the Judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts."*

The term of Francis R. Mullin, of Winchester, as a member of the Council expired in July of this year, and Nathan P. Avery, of Holyoke, was appointed to succeed him.

CONCURRENT STUDIES

As in recent reports, we list in a footnote** for convenient reference the various independent investigations of the judicial system which have been made by various commissions or committees during the past few years, as they approach the problems from different points of view and indicate public interest in the cost and efficiency of our courts.

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* In 1925, the legislature also submitted the following request to the council.

1925 RESOLVES, CHAPTER 27

"Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and, among other things, the advisability of increasing or of wholly removing the ad damnum limits of district court jurisdiction in civil cases; measures for discouraging frivolous appeals; measures for requiring parties to frame issues in advance of trial by greater specification in the declaration of what the plaintiff in good faith claims and greater specification in the answer of what the defendant admits or in good faith denies, with suitable penalties for frivolous or unfounded allegations and denials; ways and means for encouraging, so far as consistent with constitutional rights, trials without jury, including specifically an inquiry into the operation of the laws of Connecticut and Maryland relative to the waiver of jury trials in criminal cases; and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized, (Approved April 24, 1925)."

** See Report of Special Commission of 1929 on the Motor Vehicle Liability Insurance Law, Senate 280 of 1930, *Mass. Law Quarterly* for Feb. 1930; Report of Joint Committee on Public Expenditures, House 1250 of 1933, Part III, see *Mass. Law Quarterly* for Feb. 1933, pp. 94–106; Report of the "Wragg" Commission on Public Expenditures (Senate 250 of 1934, reprinted in *Mass. Law Quarterly* for Feb. 1934, p. 28; Report of the "Crime" Commission created by Resolves of 1933, Chap. 54 (Senate 125 of 1934, reprinted in *Mass. Law Quarterly* for Jan. 1934). The Massachusetts Federation of Taxpayers Association submitted certain general recommendations in 1933. The special Committee of the Boston Chamber of Commerce has made several reports (See reprint in *Mass. Law Quarterly* for Feb. 1935). The special Commission on Judicial System under Resolves of 1935, Chap. 62, reported in 1936 (See House 1750 of 1936, reprinted in *Mass. Law Quarterly* for May, 1936). A special committee of the Boston Bar Association conducted an extensive study of the judicial system of the Commonwealth and submitted to the council of that association an extended report, published in the "Bar Bulletin" No. 137 for Feb. 1938, and in "Preliminary Supplement" to *Mass. Law Quarterly* for Apr.-June 1938. A committee of the Association of Justices and Special Justices of the District Courts made recommendations to the Judiciary Committee, which sat in 1937–8 studying the district court system under Resolves of 1937, Chap. 55. Its report House 1719 is reprinted in *Mass. Law Quarterly* Prelim. Supp. for Apr.–June, 1938. The Report of the Judicature Commission, House 1205 of 1921, is also in the background of all studies of the system, and Appendix C of that report contains a list of most of the earlier studies which are also referred to in Appendix C of this report.

Appropriations

The appropriation for the ordinary expenses of the Council, including the printing of its report, was reduced to five hundred dollars ($500.) in 1937. From 1925 to 1931, the appropriation was three thousand dollars ($3,000.). The cost of printing the report for 1936 practically exhausted the small appropriation for 1937, leaving nothing for printing that year's report and other necessary and incidental expenses including postage, stationery, stenographic work and travel for members of the Council living at a distance from Boston. For this reason the Council was obliged to apply to the Governor and Council in the fall of 1937 to transfer necessary amounts from the extraordinary funds.

If the Judicial Council is to continue its work, a reasonable appropriation is essential. The continuous study for which the Council was created, the compilation of statistics of the work of the courts, the investigation of matters referred to the Council by the legislature, to say nothing of the suggestions which the Council receives from members of the courts and members of the bar, require a considerable amount of correspondence and involve the preparation of many reports, memoranda, and drafts of recommendations, frequently revised, which must be circulated among members of the Council before their meetings. All this requires clerical service. We submitted to the Budget Commissioner in 1937, a request for an appropriation of, at least, one thousand seven hundred fifty dollars ($1,750.) for the year 1938, and this appropriation was made by the legislature. We submitted a request for the same amount for each of the years 1939 and 1940, and the legislature appropriated one thousand five hundred dollars ($1,500.) for the year 1939 and the same amount for 1940.

Recommendations Adopted Since the Last Report

During the last session of the legislature, the following recommendations of the Judicial Council were adopted:

Centralized Control in District Courts

St. 1939, Chap. 230 as amended by St. 1939, Chap. 347. Briefly stated, this act required the Justices of the District Courts "with the approval in each instance of the Administrative Committee of the District Courts" to prescribe the time for opening court, the hours when the clerks' offices shall be open and the times for civil and criminal sessions. The act provides for a hearing in case of disagreement between the justice and the committee.

Following the signing of the act by the Governor, the Administrative Committee issued a circular letter to the Justices of the

District Courts which is reprinted in part as a footnote.* The act required the justice of each court to issue an order covering the matters above set forth and to submit it to the Administrative Committee for its approval. We are advised by this Committee that the months of August and September were given over to this task and that all the courts with one exception have issued such orders with the approval of the Committee. However, because there was a vacancy on said Committee, all approvals were tentative. When the vacancy has been filled, all orders will be scrutinized and a hearing held as provided in the act if the Committee feels there is need for such action. After such hearings, the Committee will formulate any rule determined wise and necessary and such will then become the controlling rule. It is not anticipated that there will be much need for the exercise of this power. We are advised by the Committee that it has had the friendly co-operation of all the judges. It also reports that of the seventy-two courts, sixty-four now use nine o'clock as the opening hour. No court opens before that hour. Eight, however, find conditions requiring a later hour, two as late as ten. The hours when the clerks' offices are open have been more nearly standardized and in some cases substantially lengthened. Additional sessions for civil trials have been fixed in a number of courts where the civil load is heavy and a beginning has been made in standardizing the summer vacation period.

We believe that a distinct advantage will flow from this centralized control.

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*EXTRACT FROM CIRCULAR LETTER OF THE ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS OF JULY 27TH, 1939

After referring to St. 1939, Chap. 347, the committee said:

"It is our opinion that each court must now establish these times and hours effective thirty days after July 12th and submit them to the Committee for approval. The chapter further provides for a hearing if there be disagreement and that final decision be with the Committee.

Without prejudice, we suggest that the Justices carefully consider the following points:

(1) Does this Act not give each Justice an opportunity to consult the bar and so learn what hours and times will be most convenient to them?

(2) From the information now at hand, fifty-five of the seventy-two courts open at 9.00, seven at 9.30, four at 10.00, three at 8.30, one at 9.15 and one at 8.45.

A standardized opening hour of 9.00 would seem desirable.

(3) The Clerk's office in fifteen of the courts is not open in the afternoon. Of these one closes at 9.45, one at 10.15, four at 11.00, six at 12.00, two at 12.30 and one at 1.00 P.M.

Of these two are large courts, three of medium and the remainder of small size. Ought the office in a large court to be closed in the afternoon? Is that not equally true of a medium size court? Should not even the smallest be open until 12.00 or the clerk available in a nearby location and notice posted to such effect?

(4) In sixteen of the larger courts the clerk's office hours are 12.00 until 4.00 P.M., two until 4.30 and two until 3.00. Is it not desirable to standardize these hours at 4.00 P.M.?

(5) In many of the courts small claims are not received during the summer months—in some cases between two and three months. Should not this department function continuously? The bar is not involved, it makes for congestion in the fall and is not in accordance with the full intent of the law. Ought there to be an arbitrary rule that no small claims shall be filed after a certain hour?

(6) A study of the thirty larger courts shows civil trial loads rising from 500 to 6,000 cases after deducting summary process actions. The information at hand indicates that this load is not distributed in many of these courts, seventeen having civil sessions on one day only, with, of course, special assignments. Does it not seem wise to spread the load over two to five days in each week? This will avoid the necessity of calling in so many special justices. It may help the justices to prepare a schedule of assignments for their own special justices which would be mutually helpful.

(7) Is it not wise to standardize the time when civil actions will not be heard, making it from July 1st to September 1st?

(8) In view of the fact that on Saturdays schools are closed and so many businesses are on a five-day schedule, ought we to consider carefully the holding of juvenile sessions, supplementary process, summons to show cause and small claims on that day? Ought we not to avoid loss to men gainfully employed wherever possible?

The justices are requested to give these matters prompt attention.

Concurrent Jurisdiction of Prerogative Writs

St. 1939, Chap. 257, extending the concurrent jurisdiction of the Superior Court to cover certain prerogative writs. This act was recommended by the Council in its 14th Report (p. 12), for reasons there stated. At the hearing before the Judiciary Committee, the Council approved of the suggestion that the writ of "certiorari" should be included in the act, and this was done. The substance of the act was recommended by the Judicature Commission in its second report (*House 1205* of 1921) and at certain times since then by the Judicial Council so that it was before the legislature for a period of nineteen years.

Should the Procedure in Regard to Prerogative Writs be Simplified by Rules of Court?

Now that concurrent jurisdiction of some of these writs has been thus extended, it has been suggested that time and expense might be saved for the bench, the bar and the litigants by the formulation of some simple rules of procedure in regard to these writs. One slight change of this kind was made by St. 1938, Chap. 202, which allowed the substitution by amendment of a succeeding town officer in a mandamus proceeding begun against his predecessor. The New York Judicial Council, in its third report in 1937 (pp. 38 and 129) recommended a revision to simplify procedure for the writs of certiorari, mandamus and prohibition, and their recommendation was adopted by legislation in 1938 (See fourth Report, p. 19). One change adopted was to provide that the petitioner should state his facts and his prayer for relief in the alternative by such writ as he is entitled to, instead of asking for a particular writ with no opportunity to amend if he finds he is technically mistaken.

If similar action is desirable in Massachusetts it does not seem to require legislation. There appears to be nothing in the statutes to prevent an entire revision of procedure in regard to such writs by the Supreme Judicial and the Superior Courts. G. L. Chap. 211, §3; Chap. 220, §2; Chap. 223, §16 and the broad language of Chap. 213, §3 seem to recognize full authority in these courts on this subject aside from any authority which they may have independent of statute.

We request suggestions from the bench and from those members of the bar specially familiar with these proceedings as to the advisability of a set of rules and as to the form of such rules and their contents if they are advisable.

Appeals in Capital Cases

St. 1939, Chap. 341, relative to appeals in capital cases. This act was first recommended by the Judicial Council in its 3rd Report

(pp. 40–43) in 1927 and later, with renewed emphasis, in its 13th Report (pp. 28–30) and in its 14th Report (pp. 14–16). The recommendation, therefore, has been before the legislature, the bench, the bar and the public for about twelve years. The act removes a traditional limitation on the functions of the Supreme Judicial Court in capital cases and provides that that court shall not be limited to the consideration of questions of law, but may order a new trial "for any reason that justice may require."

Other Matters

St. 1939, Chap. 65, repealing §61 of Chapter 215 of the General Laws for reasons stated in the 14th Report of the Council (pp. 29–30) as to the presence of a register at Probate Court sessions. This repeal removed a doubt under an obsolete statutory provision which was causing uncertainty.

St. 1939, Chap. 271 as to just procedure in unusual circumstances in criminal cases. This act was passed to meet cases described on page 38 of the 14th Report. The act is not in the form there suggested by the Judicial Council, but was entirely redrafted by the Judiciary Committee with the approval of the Judicial Council.

St. 1939, Chap. 345, establishing fees for certain documents in the District Courts. This act was recommended by the Judicial Council in its 14th Report (pp. 31–32) to avoid uncertainty and thus assist the clerical service of the courts.

St. 1939, Chap. 298, relative to statutory limitations for suits against Administrators *de bonis non*. While this act was not originally suggested by the Judicial Council, various tentative drafts of the act were submitted to, and considered by, the Council and the form of it was approved. The purpose of the act was to remove a "trap" described in Newhall's book, "Settlement of Estates," 3rd Ed., p. 386, §164.

THE MASSACHUSETTS REPORTS

In addition to the acts listed above, by St. 1939, Chap. 6, the legislature provided that the Reporter of Decisions of the Supreme Judicial Court should be appointed by the justices of that court to hold office at their pleasure.

This act followed the recommendation of the Judicial Council in its 14th Report (pp. 7–8) and in several earlier reports, as well as the emphatic recommendation of committees of the bar and others because of the intolerable delay in the appearance of the official volumes of the reports which occasioned serious inconvenience and difficulty both to the bench and the bar as well as to public officials.

Under this act the justices of the court reappointed Ethelbert V. Grabill, Esq., who had served as reporter from 1919 to 1935, and he has been at work since May 22nd, 1939.

Volume 292 had been published on March 29th, 1939, and the date of the rescript of the last case reported therein was December 9th, 1935. We are informed by the reporter that on May 22nd, when he began his work, there were 1,159 decided cases in the files in which the manuscript of reports were not ready for the printer. Many more cases have been added to this number as a result of the May, June, September, October and November consultations of the court.

The duties of the reporter and his assistants involve the preparation of manuscript for the reports, the preparation of indices and tables of cases and the examination of four stages of proof. The reporter or his assistant is also required to examine opinions of the court as soon as rendered and prepare them for the printer to publish in the Advance Sheets.

The progress made by the reporter since last May appears from the following facts submitted to us.

Volume 293 of the Reports was distributed to the public on November 13th, 1939. The date of the rescript of the last case reported therein is February 27th, 1936. Volume 294 is almost ready for distribution. Volume 295 is in page proof so that it can be cited by volume and page. More than one-third of the manuscript for Volume 296 was in the hands of the printer on December 11th. The last case to be reported in Volume 295 was decided on October 29th, 1936, so that Volume 296 when issued will carry the reports into the year 1937.

The Problem of Judicial Progress under Biennial Legislative Sessions

In the 14th Report, it was pointed out that under the recent constitutional amendment providing for biennial legislative sessions, "We must expect that the time hitherto available for the legislative Committee on the Judiciary and on Legal Affairs to devote to the study of problems of the judicial system and of the details of its functioning, will be reduced, at least, by half and will be available only at two-year intervals, so that progress in the administration of justice, every detail of which affects in some way or other the lives of more individuals than is generally realized, will be very much slower in the future so far as legislation is concerned."

Attention was also called to the statement in the Report of the Judicature Commission that, "The existing rule-making power . . . should be maintained and should be exercised by the court and regulation by rules of court should be encouraged by the legislature." It was suggested that the public need for regulation of details of practice and procedure by rule, instead of by legislation, may be increased by the coming of biennial legislative sessions and the resulting delay in the possibility of legislative action.

The Story of the Rules Bill of 1939

A bill, *Senate 542*, to extend the legislative recognition of the rule-making authority of the Supreme Judicial Court in regard to pleading, practice and procedure while retaining all the existing rule-making authority of the Superior and other courts, was favorably reported by the judiciary Committee, passed by the Senate and defeated in the House at the last session. The bill was substantially similar to the act of Congress of 1934 providing for similar authority of the Supreme Court of the United States in regard to practice and procedure in the Federal Courts.

The important part of *Senate 542* was as follows:

> "*Section 1.* Chapter two hundred and eleven of the General Laws is hereby amended by inserting after section three, as appearing in the Tercentenary Edition, the two following new sections:
>
> *Section 3A.* In addition to the authority of the several courts to make rules, the supreme judicial court may regulate by rule pleading, practice and procedure in all the courts. Such rules shall not abridge, enlarge or modify the right of trial by jury under the constitution. Such rules shall become effective on such date, not less than thirty days, from the time of their promulgation by supreme judicial court as said court may specify. *Thereafter, all statutes in conflict therewith shall be of no further force or effect.* The statutes or parts thereof thus superseded shall be specified in, or with, the rules thus promulgated. This section shall not affect the authority of the several courts or classes of courts or the justices thereof to make rules, except that such rules shall not conflict with rules of the supreme judicial court."

Senate 542 was presented on behalf of the Committee of the Boston Chamber of Commerce and was supported by a number of representative bar association committees. It was also considered by the Judicial Council and the Council voted to support the bill, and the action of the Council was communicated to the legislature. Notes of the debate in the House leading up to the defeat of the bill appear in the *Massachusetts Law Quarterly* for April–June, 1939, (pp. 12–15).

The Questions Raised by the Defeat of the Rules Bill

The bill having been defeated, the question will arise to what extent and in what manner may progress in the judicial system be maintained under the existing constitutional authority of the court and under Chap. 213, §3, Chap. 211, §3, Chap. 220, §2 and Chap. 223, §16 without waiting for further legislation. This problem seems to call for the joint and co-operative consideration by the courts, by the Judicial Council and by committees of the bar in the public interest. It seems likely that the existing rule-making authority of the courts may be sufficiently broad to authorize improvement in various directions in the same way that it was found to authorize the adoption by the Superior Court of the pre-trial procedure and of the

jury-pooling plan in Suffolk County, which have saved so much time and expense both to the litigants and to the public within the past few years. It was first suggested before those plans were adopted that there should be legislation, but upon further study it was found that legislation was not needed. This fact was referred to in the debate in the House by some of the opponents of the Rules bill.

The Functions of the Judicial Council under the Biennial Amendment

As provided in the act creating the Council, its purpose was the continuous study of the judicial system. The annual report is made to the Governor as a public document, and not to the legislature. The only way in which the reports have come before the legislature for their formal consideration has been by special message of the Governor transmitting the report to the legislature for that purpose.

The public need of continuous study of the judicial system is constant regardless of the frequency of legislative sessions. The question arises as to the best method of securing co-operation in this continuous study of matters before the Council including matters referred to it by the legislature. It has been the annual practice of the legislature to refer various bills, or subjects, to the Council with a request for a report, ever since the Council was created in 1924. An illustration of this is found in Resolve Chap. 27 of 1925, which is quoted in the footnote on the first page of this report. While the Council was created for the "continuous study of the organization, rules and methods of procedure and practice of the judicial system . . . the work accomplished and the results produced by that system and its various parts," the legislature has, from time to time, requested reports upon the subject matter of various bills relating to substantive law, rather than to the judicial system in its administrative aspects. The Council has complied with these requests and has reported its views and recommendations or suggestions in order to be of assistance to the legislature so far as it was practicable without seriously interfering with the work for which the Council was primarily created. Four legislative requests of this nature have been received this year.

The Nature of the Present Report

As the matters thus referred have to do with proposed legislative action and as the legislature does not meet again until 1941, the Council feels that it will be helpful and in the public interest to explain at some length, not only these legislative problems, but also to call attention to a number of recommendations of the Judicial Council in previous reports which have not yet been adopted, either by the legislature or by the courts. We request comments and

suggestions from the bench and the bar and from members of the public in regard to any of these matters for the assistance of the Council in considering them. Accordingly, we call attention to a number of earlier recommendations of the Council and follow them with discussions of the legislative requests. We call attention, for convenient reference, to the history of the Judicial Council and its work since 1924, which was printed as Appendix A in the 14th Report (pp. 43–73). As there stated,—

> ". . . attention may well be called to the reminder, on page 23 of the 2nd Report of the Judicature Commission, 'that in the development of a judicial system sudden changes of a very radical character . . . are not easily effected.' Progress in a community with settled habits of thought of many years' standing is generally gradual in the administrative field. One of the functions of a judicial council is to submit the best proposals which they can think of to adjust this or that part of the judicial system, or of the methods of procedure, to meet the changing public needs of justice, as well as of the tax-payers who pay the public cost, not with the expectation that these proposals will necessarily be adopted forthwith, but in order that such proposals may be ready at hand as a basis for discussion and improvement when the public need is recognized sufficiently to stimulate action by *the courts* or the legislature."

This is illustrated in a striking manner by the fact, already mentioned in this report, that St. 1939, Chap. 257, was first recommended nineteen years before its passage and St. 1939, Chap. 341, was first recommended about twelve years before its passage.

THE DISTRICT COURTS

The problems of these courts still exist. They have been considered not only by the council, but by various commissions and committees, whose reports are listed in the footnote on page 5. We adhere to our stated objectives—full-time judges, removed from non-judicial activities, and adequately paid. That is presently impracticable on a state-wide basis. We recommended such full-time service in fourteen of the larger district courts. The Judiciary Committee increased the number to twenty, including several which have not a sufficient work-load to call for full-time service of even one judge.* No legislation resulted, and much of the opposition rested on a fear of increased net cost, a position which calls for examination and analysis.

The powers of the administrative committee were enlarged by Stat. 1939, Chap. 347, giving it supervision over the times for holding sessions, of opening court, and of the clerks' office hours. We are informed that this grant of power has produced,with the co-operation of the district judges, marked results in increased serviceability of these courts as already explained on p. 7 of the report.

*See House 2314 of 1939.

It is obvious, however, that this statute does not reach the real source of trouble—part-time judicial service. The practice by many special justices in motor vehicle tort litigation has been discussed for some years and many suggestions made about it. As no legislation resulted and the practice continued, on December 27, 1938, the Council through its chairman sent a letter to the Chief Justice of the Supreme Judicial Court, calling the matter to the attention of the Court as follows:

"A serious problem is presented by the fact that motor tort cases are accepted by some of the presiding justices and many of the special justices as a part of their private practice, and serious objection has been raised as to the propriety of such practice in view of the fact that they are called upon to hear these cases as magistrates.

"It is our opinion that the foregoing matter can more properly and wisely be cared for by rules promulgated by your court than through legislation. The latter opens the way for dispute, ill-founded statements and some measure of disrepute for the courts."

The Council then suggested, in the letter, a draft rule for the consideration of the Court as follows:

Draft of Rule Submitted to the Court

"ORDERED By the justices of the Supreme Judicial Court that beginning with the first day of April in the year of our Lord one thousand nine hundred and thirty-nine, no justice of a district court shall be retained or employed or shall practise as an attorney in any action of tort arising out of the ownership or operation of any motor vehicle or in the adjustment, settlement or disposition of any claim for damages arising from or as a result of a motor vehicle accident, and that no special justice of a district court shall be eligible to hear any action of tort arising out of the ownership or operation of any motor vehicle if he shall be retained, employed or shall practise as an attorney in such branch of the law.

"This rule shall not be applicable to the justice or special justice of any district court where the population of such court according to the last preceding state or national census shall be less than twelve thousand people.

In support of this rule the Council submitted, in the letter, the following:

Statement to the Court in Support of the Draft Rule

In the report of the Committee on Joint Judiciary (1938)* appears the following:

'The evil results of having judges engage in private practice are particularly marked in motor tort cases. Due to the compulsory insurance law, these cases are usually defended by insurance companies. A part-time judge might find himself in the position of seeking a settlement with a lawyer representing an insurance company one day, and then hearing as a judge a case defended by that same insurance company the next day.

'The embarrassment of insurance counsel in trying before a judge with whom he is negotiating a settlement in another motor tort case, and the chagrin of a plaintiff's attorney in trying a motor tort case before a judge

*House 1719 of 1938, Mass. Law Quart. Prelim. Supp. for April-June, 1938.

who, in his private practice, defends such cases for insurance companies, are easily understood.

'The Supreme Judicial Court has taken cognizance of some of these difficulties and has adopted two rules, one prohibiting a district court judge (either presiding or special) from practising as an attorney on the criminal side of any court in the commonwealth; and the other prohibiting special justices from practising civilly in their own courts, except when their court serves a population of less than twelve thousand people.

'These rules do not cure the evils described above. They merely prevent some of the most flagrant cases. They do not take the judges out of motor tort litigation. Even in his own court, a special justice may employ another attorney to bring or defend a motor tort case, and remove it, and may then appear in the Superior Court. This, we are informed, is often done. Also, we have no doubt that a number of justices and special justices who do not themselves try motor tort cases are partners in firms whose practice includes such cases.'

"We agree with the committee that one of the most prolific sources of criticism to-day is the practice by presiding and special justices in the motor tort field. It is our opinion that this criticism could be eliminated. The present situation is analagous to that prior to the promulgation of the rule by your court with respect to practice by special justices in their own courts."

"In a recent report, it was said:

'It is pretty generally admitted that judges and special justices of the district courts should be disentangled from the practice of handling motor vehicle tort actions and cases for plaintiff or insurance companies and also that they should not appear as paid lobbyists. . . . Both practices tend to lower the courts in public confidence.

'Both have been criticized and condemned in arguments heard and read by us in the course of our investigation. These grievous conditions should be brought to the attention of the Supreme Judicial Court.'

"With this statement, we are in accord. We feel that your court would be doing a very great service to the district courts if you promulgated a rule forbidding all practice by justices in the motor tort field and making special justices ineligible to hear such cases if they practise in that field. It may seem that there should be one rule for justices and special justices alike. It is our feeling, however, that, as applied to special justices, such a rule would be too exacting and result in injustice and the loss of some good men; whereas, if the distinction is made as indicated, simply making the specials ineligible, there can be no legitimate criticism.

"For practical reasons, the rule should exempt the officials in District Courts serving a population of less than twelve thousand.

"This letter is submitted by direction, and on behalf, of the Judicial Council.

Yours respectfully,

FRANK J. DONAHUE,
Chairman.

We also call attention to the following statement in our last report (pp. 19–20):

"The special justice system has, in general, worked well and business has been dispatched expeditiously. A few men, however, in violation of propriety began to capitalize the title. This development was contemporaneous with the growth of motor tort litigation. The Executives not fully understanding the trend made some unfit appointments. These appointees carried into office a sense of commercial value attached to title and a not always keen sense of propriety.

"In an attempt partially to meet these unfortunate developments, two rules were promulgated by the Supreme Judicial Court. One forbade the appearance as counsel in any criminal case of either a justice or special justice. The other prohibited the special justices from practice on the civil side in their own courts. Thereafter an attempt was made before the legislature to place the special justices on a salary basis. That effort failed.

"It has been increasingly clear that the various factors named and the character and activities of certain special justices (fortunately few in number) have aroused sharp criticism not alone of the individual but of the courts themselves. It has become necessary, in fairness to all and in order to maintain the confidence of the public in the courts, to make some adjustments. We are not disposed to hold the system to be utterly archaic and urge its entire abolition nor can we under present conditions wholly dispense with these services. Primarily it seems to us the immediate objectives should be to seek to improve the type of future appointees, to reduce the number to more manageable form and adequately to compensate those for their services.

"The first is unattainable without the co-operation of the governors. We cannot too strongly urge fitness and character for these positions. The second can be accomplished, painlessly, at least, only by a gradual reduction in number through death and resignation. We support the idea that no new appointments should be made until each court now being served by two is reduced to one and each court with three has two only. The ultimate aim and ideal should be, so far as possible, to substitute a full-time special in each court. The third objective should be some form of compensation fair to the officials and to the public. This is a difficult problem."

The Council is continuing its study, but reserves further comment for its next report, since the legislature will not assemble in 1940.

As in previous reports, we append a chart in Appendix B prepared by the Administrative Committee showing the volume of the business of the District Courts (facing page 66). A comparative analysis follows.

DISTRICT COURT BUSINESS, 1933-1939.

A Five Year Comparison of Years from October 1 to September 30, Inclusive

(This table does not include the business of the Boston Municipal Court)

	1933 to 1934	1934 to 1935	1935 to 1936	1936 to 1937	1937 to 1938	1938 to 1939
Civil writs entered.....	70,797	80,056	74,560	75,680	82,715	80,998
Contract.....	34,859	32,036	28,144	27,890	30,271	30,968
Tort.....	21,286	32,403	30,813	32,260	35,886	34,016
Summary Process (Eject.)	13,514	14,651	14,267	14,707	15,596	14,770
All other cases.....	1,138	965	1,336	823	962	1,244
Removals to Sup. Ct.....	3,626	8,887	10,406	13,065	14,595	13,334
Reports to App. Div....	317	339	337	312	267	294
Appeals to S. J. C.....	38	42	59	38	36	24
Supplementary Process .	10,034	9,038	9,701	11,067	16,029	17,652
Small Claims.....	22,656	22,881	21,453	23,533	30,181	38,557
Criminal cases begun ...	162,402	159,273	155,560	157,869	149,569	149,937
Criminal app. to Sup. C..	7,615	7,026	5,765	5,050	5,375	4,867
Drunkenness.....	74,849	71,542	70,223	72,925	65,147	63,361
Op. under inf. intox. liq..	5,446	5,451	5,099	5,532	4,613	4,409
Total automobile cases..	44,160	46,475	50,023	45,762	47,694	48,568
Int. liquor cases.....	1,832	844	727	574	485	389
Juv. cases under 17 yrs..	7,281	6,887	5,680	6,524	5,834	6,270
Total motor tort cases.....		27,800	20,568	28,081	31,588	29,585
Total removals by plaintiffs...		3,432	4,967	6,456	6,851	6,230
Total removals by defendant..		4,277	3,850	4,929	6,175	5,470
Total removals by both.....		52	108	115	50	51
Total rem. of motor tort cases		7,761	8,925	11,500	13,076	11,751

Trial Justices

Under St. 1938 c. 324 the Administrative Committee of the District Courts has compiled from the reports of the ten trial justices the table in Appendix B on page 68, showing more fully than before the nature of the criminal cases heard by them. Trial justices have no civil jurisdiction. They are justices of the peace "designated" by the Governor for periods of three years under G. L., c. 219, §1 which provides that they "may" be so "designated and commissioned" in the ten towns listed below*. If no designation is thus made in any of the towns, the business of that town goes to the court of the district in which the town is situated.**

*Andover, North Andover, Barre, Hardwick, Hopkinton, Hudson, Ludlow, Marblehead, Nahant, Saugus.

**This law resulted from the report commission of 1916 (Senate Doc. 347 of 1917).

Recommendations and Suggestions in Earlier Reports which Have Not Yet Been Adopted and as to Which Suggestions Are Requested by the Council

(*Some of these recommendations or suggestions may be within the rule-making authority of the courts without legislation.*)

Entry Days for Criminal Appeals

Nineteen years ago, the Judicature Commission, of which the late Judge Sheldon was Chairman, recommended a weekly, instead of a monthly, return day in the Superior Court for the entry of appeals from District Courts in criminal cases. The Judicial Council has renewed this recommendation for practical reasons in what they believe to be the interests of justice, as explained in the 12th Report (p. 47), the 13th Report (pp. 23–24), and the 14th Report (p. 28). It is stated in a recent article, quoted in the Council Reports, that under the present system of monthly return days, "It is not unusual to see the criminal courts (in Suffolk County) closed by the 20th of the month because of lack of business and at the same time find several hundred men waiting in jail to be tried." This means that the monthly entry day reduces the efficiency of the court.

We renew, with emphasis, the recommendation for a weekly entry day and invite the reaction of the bench and bar on this subject.

Procedure as to Accessories After the Fact

In the 12th Report (pp. 43–47), in the 13th Report (p. 23), and again in the 14th Report (pp. 26–28), the Judicial Council has recommended a change in the statute relative to accessories after the fact. At common law, only a wife was exempted from punishment for this offence. Since 1836, the statute, the history of which was explained in the 12th Report, has exempted not only a wife or a husband, but any one "by consanguinity, affinity or adoption, the parent or grand-parent, child or grandchild, brother or sister of the offender." It has been suggested that this list of exemptions is too broad and that when combined with the procedural difficulty which faces the prosecution provides "a standing invitation to the ingenious criminals with modern training under modern conditions to take advantage of it." The procedural difficulty is that under the statute the government is required to prove a negative without any positive evidence from the defendant as to these varied possible relationships.

The situation presents two questions: one, whether the exempted relationships should be narrowed, and the other, whether under the present statute or any modification of it the defendant should be required to prove the relationship relied on as an exemption, or, at least, file in advance of trial a notice of the alleged relationship relied

on; and that unless such notice is filed there shall be a presumption that such relationship does not exist.

The Council, in the 14th Report (p. 27) submitted two alternative drafts. The working of the existing law is illustrated by *Com. v. Sokorolis*, 254 Mass. 454 at p. 458 and in *Com. v. Wood*, 1939 Adv. Sheets 297.

Privileged Conversations in Domestic Relations Cases

In the 2nd, 4th and 7th Reports of the Council, a recommendation was made to allow testimony of a husband or wife as to private communications in domestic relations cases generally, as they have been allowed, ever since 1911, in nonsupport cases in the District Courts. We invite comment.

Third Party Procedure

In the 12th Report in 1936 (pp. 49–54) at the request of the legislature, the Council made a report on the subject of third party procedure, giving the history of the practice in the Federal Courts and the English Courts and submitting a draft act providing for such procedure with leave of court and not as a matter of right, as had been suggested in a proposed bill.

The act then recommended is printed below in a footnote.*

Since that time the new Federal rule on the subject (Rule 000) applicable to proceedings other than Admiralty cases, has been adopted for the United States Courts. As the procedure developed in the Federal Admiralty Courts as a matter of judicial practice without legislation, this subject may be within the existing rule-making authority as recognized by statute and we suggest its consideration from that point of view. Some of the problems arising in the application of the federal rule are discussed in the American Bar Association Journal for October 1939, p. 858.

The Reporting of Decisions

We call attention to a recommendation in the 14th Report (pp. 8–10) for a change in the statutory functions of the reporter and invite comment.

**Section 1.* Section three of chapter two hundred thirteen of the General Laws is hereby amended by adding at the end thereof the following new paragraph:

The Supreme Judicial Court and the Superior Court may also provide rule for procedure in such classes of actions at law as they may deem advisable in the interest of justice by which a defendant may petition with, or without, notice to other parties as the court may determine for leave of court to bring in any other person who may be partly or wholly liable either to the plaintiff or to the petitioning defendant by way of remedy over, contribution or otherwise, or whether in contract or tort, growing out of the same matter. Such rule may provide for the time within which such a petition may be filed, the nature of the allegations and of the evidence by affidavit or otherwise to be presented in support of such allegations, and the process to issue, directions as to service, the trial of issues together or separately and the entry of appropriate judgments and executions including judgment and execution against one or more defendants primarily and one or more secondarily or between defendants and for any other details of practice in connection with such procedure as justice may require for the purpose of adapting the third party procedure under the admiralty rules of the United States Courts to cases at law so far as applicable.

Section 2. The Municipal Court of the City of Boston and a majority of justices of other district courts also may make rules for such procedure in like manner as other rules for civil actions in said court are made.

The Judicial Council, in its 3rd Report in 1927, said (at p. 53):

"There is a widespread feeling at the bar with which we sympathize, that there are many cases which might be disposed of by memorandum decisions—and that much time of the judges could be saved and the number of volumes of printed reports be lessened, if, in accordance with the practice of the United States Supreme Court and other courts, such memorandum decisions were frequently handed down."

This was the original intention of the Legislative Committee of 1859 as appears from its report (House Doc. 120 of 1859, pp. 14–15). That committee said:

"Any legislation that tends to secure speedy decisions and concise statements of legal principles, in the present age of inflated general and legal literature, will be hailed with enthusiasm by the profession and the people . . . the public and the profession would be quite satisfied with such opinions, as a learned and intelligent court like ours should be content to give in the form of a rescript."

This peculiarly modern suggestion made 80 years ago, did not mean, of course, that fuller opinions should not be written in cases of first impression, cases in which the authorities are conflicting or obscure in their meaning so that the law is uncertain, constitutional questions of far-reaching importance if not clearly settled, cases in which the court decides to over-rule or clearly modify prior decisions, or occasional cases which for some reason are of great public importance and call for more extended opinions to develop the law and guide the profession and the community in future. It merely means that many cases could be more concisely and promptly decided with less expense for every one in time, labor and money in the use of the reports.

The Council recommended in the 14th Report the draft act in the footnote below.*

The suggested act follows in general the suggestions in the 3rd Judicial Council Report. However, further changes are made in the new Section 64. Requirement of publication of tables of cases

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**Section 1.* Section 8 of Chapter 211 of the General Laws is hereby amended by striking out said section and substituting therefor the following:

The Full Court as soon as may be after the decision of questions submitted to it make a rescript which shall contain a proper order, direction, judgment or decree for the further disposition of the case and a brief statement of the grounds and reasons for the decision if no opinion shall have been written and filed in the case; or it may by a writ of certiorari or other proper process remove the record of the case, or order it to be removed, into the Supreme Judicial Court, there enter judgment, and remand the record to the court from which it was removed to carry such judgment into effect, or instead thereof, the Full Court may order a new trial or further proceedings at the bar of the Supreme Judicial Court, or order sentence to be awarded or execution issued in said court.

Section 2. Section 9 of Chapter 211 of the General Laws is hereby repealed.

Section 3. Section 64 of Chapter 221 of the General Laws is hereby amended by striking out said section and substituting therefor the following:

Section 64. Preparation of Reports. He shall attend the law sittings of the court unless excused therefrom by the Chief Justice and shall prepare for publication the opinions of the court in all cases in which opinions are filed by the court, with suitable head notes and indexes and shall furnish them to the publisher and superintend the correction of the rescript, proof reading and publication thereof. The reports of opinions in all cases in which opinions shall have been filed before September first in each year shall be published within ninety days thereafter.

is omitted. Presumably this refers to the tables of cases cited in the volume. From our experience we do not believe that this table is used enough to warrant the expense and space required for its publication. The present statute provides that the reporter "shall in his discretion report the several cases more or less at large according to their relative importance so as not to unnecessarily increase the size or number of the volumes of reports." It would seem that this sentence was never needed. A competent reporter would comply with it anyway and an incompetent one would not know how to. Also if the requirement is to be changed to printing only the opinion when filed by the court, the court itself would be able to use its discretion about the length of opinions and the number of opinions and the reporting of cases requiring opinions, so that the result aimed at in this section would be accomplished by the court itself without the need of any clause in the statute.

As already stated we invite comment. This question touches the suggestion for an appellate session of the Superior Court discussed later in this report, for if a workable appellate session were established the number of cases reported in the official reports should be materially reduced.

Organization of the Bar

The continued progress of the movement for a fully organized state bar, is shown by the recent addition of Texas and Wyoming making a total of twenty-three states thus organized.* This subject with several drafts for legislative action was referred to the judicial Council in 1937 with a request for a report. For the reasons stated in the 13th Report (pp. 35–39), the Council opposed the bills for legislative integration of the bar and made the following recommendation.

> "It seems to us that a resolve requesting the court to act is the proper legislative proceeding under the constitution, and accordingly we recommend the following:
>
> Resolved, In order to promote the public interest in the administration of justice, in the interpretation of the laws, and in the bar of the Commonwealth as a body of officers of the court, the Supreme Judicial Court is hereby requested to provide, by rules, for the organization of all present and future members of the bar of this Commonwealth, as a self-governing body subject to the constitutional authority and rules of said court, to be known as the Bar of Massachusetts."

This recommendation was based on the recognition of the constitutional authority of the Supreme Judicial Court to provide for the organization of the bar without a statutory mandate, but with the assistance of the bar itself. As the discussion of the subject seems likely to continue in Massachusetts as elsewhere, we think this constitutional aspect of the matter should be borne in mind.

*See Journal of American Judicature Society for December, 1939.

Minor Settlements

In the 14th and several earlier reports was the following recommendation:

DRAFT ACT TO PROTECT MINORS

If a minor is injured under circumstances which give rise to a claim for personal injuries, no settlement of said claim for a sum in excess of $500. or payment of a judgment or execution therefor in excess of said sum shall release the defendant or satisfy said judgment or execution unless and until paid to a legal guardian of said minor.

We invite comment.

REPORTS REQUESTED BY THE LEGISLATURE

1. Slander by Radio (House 2402)

By joint order, adopted in the Senate on July 26th and in the House on July 31st, the legislature provided that:

". . . the Judicial Council be requested to investigate the subject-matter of current House document numbered twenty-four hundred and two, relative to slander by radio, and related matters, particularly with reference to the advisability of repealing the distinction between slander and criminal libel, and to include its conclusions and recommendations in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, in its annual report for the current year."

A bill numbered *House 901* was referred to the Committee on Constitutional Law which reported instead, the bill numbered *House 2402* referred to in the joint order. *House 2402* reads as follows:

"An Act Relative to Slander by Radio

Chapter two hundred and seventy-two of the General Laws, as amended, is hereby further amended by adding at the end the following:—

Section 104. Any person who himself or through his agent makes orally by a radio broadcast a statement about another person which is slanderous per se, shall be subject to the same punishment as if he had published the same statement in writing, and truth shall be a defence to the same extent as in a civil action for slander."

House 901 provided for civil and criminal liability, not only of the speaker or his agent, but of the "owner or operator of the broadcasting station" under certain circumstances.

We have conferred with certain members of the Senate and House and others actively interested in the subject. We have examined the statutes of various states and judicial opinions and other discussions of the common law of libel and slander as applied to defamation by radio. References are given in a footnote.*

The frequent abuse by speakers of the opportunities for defamatory remarks offered by the radio is a matter of common knowledge.

The problem appears to arise most frequently in connection with political speeches of candidates during a campaign, but it is likely to arise unexpectedly in any radio speech. What, if anything, can be done to check it which will not breed other undesirable problems? Should there be legislation subjecting the speaker, the employer of the speaker or the broadcasting station, or all three, to penalties or new civil liabilities?

We have reached a tentative conclusion and as the legislature does not meet again until 1941, we state it and request criticism and suggestion in regard to it for consideration by the Council prior to its annual report in 1940.

So far as extending the civil or criminal liability of a broadcasting station is concerned, we do not recommend it. As stated in one of the most recent opinions a few months ago, by the Supreme Court of Pennsylvania, "Radio broadcasting presents a new problem, so new that it may be said to be still in a state of development and experimentation. It was not conceived nor dreamed of when the law of libel and slander was being formulated". There has been a marked difference of opinion as to whether the law of defamation applicable to newspapers, regardless of negligence, or the law of negligence governs such stations. As pointed out in the Pennsylvania case referred to,* the American Law Institute, in its *Restatement of the Law of Torts*, in §577 (15) stated the general rule:

> "Publication of defamatory matter is its communication intentionally or by a negligent act to one other than the person defamed."

To this is appended, in Comment (g), the following caveat:

> "The Institute expresses no opinion as to whether the proprietors of a radio broadcasting station are relieved from liability for a defamatory broadcast by a person not in their employ if they could not have prevented the publication by the exercise of reasonable care, or whether, as an original publisher, they are liable irrespective of the precautions taken to prevent the defamatory publication."

This caveat appears to have been adopted after full discussion, on the ground that the decided radio cases were insufficient in number to require the acceptance of an analogy presenting such serious practical and legal difficulties.

So far as we are aware, the question has not been decided in Massachusetts. As the Federal government regulates the licensing of stations as instruments of interstate commerce, there are serious questions as to the constitutional power of a state to subject them to special *statutory* liabilities of the state. Aside from that aspect

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**Summit Hotel Co. v. National Broadcasting Co.*, 8A (2d), 302 (Pa.) St. decided September 8, 1939. In that case, the speaker, without the slightest warning to any one, referred to the plaintiff's hotel as "a rotten hotel." The court held that the broadcasting station was not liable. The opposing view is stated by Professor Vold in an article in 2 Journal of Radio Law, 673; cf. an article by John W. Guider in the same volume, p. 708; and note in Harvard Law Review for November, 1939, p. 143; and 20 B. U. Law Review 154.

of the matter, so far as criminal penalties are concerned, they certainly should not be applied to cases where there was no chance to prevent the remarks.

The problem seems to reduce itself to the question of abolishing the distinction between slander by radio and libel for the purposes of the criminal law as applicable to the speaker and his principal. For the purpose of civil liability the speaker and his principal are liable for slander whether over the radio or otherwise.

We think there is a marked difference (even if it be called one of degree) between spoken defamation within the reach of a man's voice, even with loud speakers, and radio defamation which has no limits and is more far-reaching than newspapers. The old reason given for the common law offense of criminal libel was the tendency to lead to a breach of the peace and thus a threat to public order. That reason hardly applies to radio defamation, but we think the possibility of limitless defamation provided by modern science furnishes a new reason for a modern law of libel to protect the public so far as reasonably possible from the demoralizing influences of unrestricted world wide opportunities of indiscriminate defamation.

The value of any attempt to check the abuse lies mainly in its self executing character of a warning of consequences. If the consequences of defamation by radio are to be extended, we see no reason why they should not be extended to the man who uses an agent to speak the words.

We do not understand that the Federal power over interstate commerce prevents a state in the exercise of its police power from imposing civil or criminal liability on defamers within its borders merely because they utter their defamations over a station holding a federal license, *provided* that Congress has not itself entered the field for the regulation of liability for defamation by means of the instruments of interstate commerce.

In the Minnesota rate cases (230 U. S. 352, at pp. 399–400), Mr. Justice (now Chief Justice) Hughes stated the law as follows:

> "The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the States with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting legislation."

The Federal Communications Act of 1934 (which appears in

Title 47 of the 1934 edition of United States Code) provides in §326 that:

> "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication. (June 19, 1934, c. 652, §326, 48 Stat. 1091.)"

By this section, Congress appears to have expressly *refrained* from dealing with "free" speech by radio *except* to prohibit "obscene, indecent or profane language" subject to penalty by §501 or §502.

This failure to regulate liability seems to leave that matter within the police power of the states so long as the *exercise* of that power does not interfere with what Congress already has done.

We believe that the creation of, or change of, liability for defamation within its borders is within the power of a state at least until Congress acts on the subject. To attempt to implement the liability statutes by requirements that a station *shall* keep transcripts and records of a certain kind, as was originally suggested in *House 901*, would be of doubtful validity because of the Federal Communications Act.

Accordingly, we make a tentative recommendation for discussion substantially as provided in *House 2402*, but in the slightly differing language of the opening lines of *House 901*, and submit *at this time for public criticism* the following:

DRAFT ACT

> Whoever, by himself or by his agent, makes a statement by radio broadcast which if published in writing would be a libel, shall be deemed to have made and published a libel, and shall be civilly and criminally responsible therefor according to the same provisions of law, practice and procedure as in other proceedings for libel.*

2. Intermediate Appeals

By Resolves, Chapter 17, the legislature requested the Judicial Council:

> ". . . to investigate the subject matter of" [House 1355] "relative to providing for an appellate court, establishing its jurisdiction and providing for appeals therefrom to the supreme judicial court, and to include its conclusions and recommendations in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, in its annual report for the year nineteen hundred and forty."

*Note. The wording of G. L., Chap. 231, § 93, does not appear to need any change in phraseology in order to make it applicable to radio defamation in providing the defendant with the right to offer the publication of a retraction in litigation of damages.

This matter deserves the study of both bench and bar. As a basis for such study, we submit suggestions received and ask for comment and other suggestions.

The bill referred to (*House 1355*) provided for the creation of a new, separate appellate court with a chief justice and five associate justices to sit in divisions for hearing of intermediate appeals from all courts below the Supreme Judicial Court. At the hearing before the Judiciary Committee, the petitioners abandoned that plan and supported the plan for an Appellate Division of the Superior Court to act as a sieve for the Supreme Judicial Court and provide those litigants who wished to appeal for a decision by more than one man, an opportunity for such an appeal similar to that offered by the Appellate Divisions of the District Courts which have been in effective operation for many years, first in the Boston Court since 1912 and since 1922 in other district courts also.

We are strongly of the opinion that *if* intermediate appeals are provided for they should be heard by an appellate division of the existing court, and not by a new court. Multiplication of separate courts is opposed to the policy of greater unification needed for the effective administration of modern business.

These suggestions of intermediate appeals were discussed by the Judicial Council in its 3rd Report in 1927 (pp. 45–46) as follows:

> "The suggestion that an intermediate appellate court or division be created for the relief of the Supreme Judicial Court deserves and has received our most careful consideration. It may be that this will prove to be the only solution of the difficulty. It is the method which was adopted in 1891 to relieve the pressure upon the Supreme Court of the United States, and it is the method which has been adopted in most of the larger states. We hope that it may not be necessary to take this step in Massachusetts. While the appellate divisions of the Municipal Court of the City of Boston and the other District Courts have proved most valuable and have completely justified their creation, the problem is very different in the Superior Court. If an appellate division of that court were to be created, or an independent Appellate Court were to be established, it would obviously be necessary to provide that its decisions in most cases should be final, as otherwise we should have the admitted evil of successive appeals. If the decisions of the intermediate court or division were made final in many cases, presumably the opinions of that court would have to be published and we should thus have a second series of reports. Such an arrangement is not satisfactory and we think should be avoided except as a last resort. If there are other reasonable expedients, they should first be tried."

Certain disadvantages of intermediate appellate tribunals were pointed out in the careful study of their operation by Professor Sunderland, which was reprinted in Appendix D of the 3rd Report (p. 114).

Under present, and probable future, economic conditions, the main reasons *in favor* of such a division seem, first, the advisability

of a prompt, inexpensive opportunity for litigants, for whom the courts exist, to satisfy the natural, and probably irrepressible, desire of many parties to obtain the judgment of more than one judge, and, second, the importance of relieving the Supreme Judicial Court of many cases which would stop in appellate division. The main reasons *against* the proposal seem to be the burden on the parties, and the public, of successive appeals in an uncertain volume of cases and the uncertainty of the law which has to some extent resulted from systems of intermediate appeal.

We are not sure that the danger of successive appeals in any large number of cases is so great as is suggested in the passage quoted or that it outweighs the possible advantages of an appellante division.

The objection of uncertainty in the law was forcibly stated by Mr. McClennen in statement in Appendix D of the 3rd Report of the Judicial Council (pp. 141–142) as follows:

"The decisions of an intermediate court of appeals will not satisfy litigants as well as those of the highest court. Its effect upon the settlement of the law is distinctly bad. Its decisions will be binding on the trial courts, however strong the conviction that they are wrong. At the same time, there will remain the doubt as to whether the law has been properly declared and whether there is any prospect that the question will get before the court of last resort later with the result that the trial courts will find that they have, under compulsion, been proceeding on erroneous principles. One or two illustrations—not by any means sporadic—are referred to. In February, 1923, the Appellate Division of the Supreme Court of New York erroneously decided a question of law (204 App. Div. 447). The case was returned to the Trial Term which felt compelled to follow the decision of the Appellate Division. Other cases were decided on the strength of it. When the first case came again from the Trial Term to the Appellate Division, the same decision was reached again. A dissent made it possible to carry the case to the Court of Appeals. On July 9, 1926, that court decided the case reversing the Appellate Division (243 N. Y. 295; 153 N. E. 79). There is no knowing how many cases in the trial court had been disposed of on the strength of the erroneous decision during the period of more than three years when it was the law of New York as declared by the highest court, before which the question was likely to come. During this time there was this authority preventing the trial courts from exercising their own judgment unfettered by decision of a higher court and with knowledge, at the same time, that the principle had not been established by decision of the court of last resort.

"A more striking illustration exists in the Federal Courts. In 1903 the Circuit Court of Appeals for the Seventh Circuit decided on important question of patent law and public policy (123 Fed. 424). The court deemed the question in substance already decided by the decision of the Circuit Court of Appeals for the Sixth Circuit, rendered in October 1896 (77 Fed. 288). The decision of 1903 was followed in more than a dozen reported cases in the District Courts, the Circuit Courts and the Circuit Courts of Appeal of that and other circuits. The decisions were acted upon by many lawyers in advising clients and in the preparation of contracts. Ten years later, in 1913, the question got to the Supreme Court of the United States. That court held the law to be contrary (229 U. S. 1) to what had

been laid down by the Court of Appeals ten years before. The difficulty was not due to the inferiority in quality of the judges in the Circuit Court of Appeals to those in the United States Supreme Court. It is inherent in a system which provides courts speaking with the authority of courts of appeal, rendering decisions which must be followed by lower courts although those appellate courts are not in a position to announce the law with finality. The cases referred to show this."

The same difficulty under the English system of appeals, has been commented on in recent years by Claud Mullin's "In Quest of Justice." (Chapter V).

It has been suggested to us, however, that there may be various methods of minimizing this uncertainty in the law. In the first place, many personal injury cases, which would probably stop in an appellate division, would not cause such uncertainty as they do not involve ordinarily many uncertain questions of law and such as there are would be pretty sure to be carried up to the court of last resort by some one. In the second place, it may be provided that if both parties wish to go directly to the court of last resort without an intermediate decision they can do so. In the third place, it has been suggested that a decision of the appellate division should not have the compulsive force of precedent in the Superior Court, aside from the persuasive force of its reasoning. An appeal in a case in which the soundness of a decision of the appellate division is involved should, by agreement of parties, or by direction of the presiding judge in his discretion, be carried directly to the Supreme Judicial Court, or reported to said court by the appellate division with, or without, an intermediate hearing.

This suggestion is based on the view that, under modern conditions with the obvious possibilities of mistakes even by an appellate tribunal which are recognized by such tribunals themselves as well as by others, such a modification of the doctrine of *stare decisis* as applied to decisions of an intermediate appellate tribunal is not unreasonable; that courts of last resort overrule themselves at times; and that if a single judge of ability, after full argument and consideration, disagrees with an appellate body of his own intermediate court he may contribute to the more prompt development and greater certainty of the law. It is suggested to us that the whole common law doctrine of *stare decisis* has been criticized from many angles; that there is no reason why it should be treated as something beyond reasonable regulation; that the reason for the doctrine has been the idea that it makes the law certain, but if it is applied by intermediate courts in such a way as to render the law uncertain in the manner pointed out by Mr. McClennen, it should be modified in such a way as to accomplish its original purpose more effectively under modern conditions.

Does this proposal contain a practical answer to the objection of Mr. McClennen? That it is an experiment is no objection, if it is reasonable, because experiments in the judicial system are essential to progress. It is suggested to us that the controlling consideration seems to be the need of providing an opportunity for a prompt, inexpensive appeal, with as little technicality and red-tape as possible, and without printing, from the decision of *one* judge, and that the probable increase of public confidence in the courts from the existence of such an opportunity may result in more justice than an extreme adherence to, or extension of, the doctrine of *stare decisis*. Under such a plan a decision by the appellate division would be a "source of law" for a single justice, rather than a binding precedent.

The story of the creation of the Federal Circuit Court of Appeals in 1896, as a result of twelve years' discussion in the American Bar Association, in order primarily to break the docket of the Supreme Court of the United States Supreme Court, is told by Professor Radin in his account of the achievements of the American Bar Association in the *American Bar Association Journal* for November 1939. The discussion ranged about a number of proposals, unknown, or forgotten, by most of us, including suggestions for reorganizing the Supreme Court of the United States. The movement for the appellate divisions of our Massachusetts District Courts lasted about the same length of time, but was for the purpose of developing more effective trial courts and avoiding double trials.

The proposal for an appellate division of the Superior Court has the double purpose of relieving the Supreme Judicial Court and also of making the Superior Court a more effective court for the prompt and less expensive disposition of cases for litigants who want some opportunity for a hearing before more than one man without delay or heavy cost. One of the recent critical English writers on the English system and its high cost to litigants suggested that, as the judges were supposed to know the law, if they made mistakes, the costs of appeal to correct their mistakes should be paid by government.* While this form of theoretical justice is not feasible, it is suggested that practical justice calls for a minimum of cost to correct mistakes. If both purposes of the proposal for an intermediate appeal seem good, the question is whether they can be workably accomplished in a way to meet objections.

The suggestions referred to thus far, have contemplated a statute and a draft has been submitted to us which follows the wording of G. L., Chap. 231, §§108–110, relating to the Appellate Divisions of the District Courts, with changes to adapt it to the Superior Court. Approaching the question from another angle, the suggestion has also been made that, if the Superior Court could experiment without

*C. P. Harvey, "Solon or the Price of Justice," pp. 99–100. Cf. Mullins' "In Quest of Justice."

a statute, we should learn something pretty soon about the matter, instead of guessing about it.

Can the Court Experiment Without Legislation?

Is there anything in the statutes to prevent the Superior Court from trying the experiment of an appellate *session* without legislation, to see how it works? The court tried the pre-trial session without legislation and it worked and was sustained by the Supreme Judicial Court. If it can do that, why can it not try a post-trial session (or *pre-appeal* session) and find out whether it meets a need and whether legislation is either desirable or necessary and whether additional judges would be needed if the experiment proved successful? In other words, what is there to force the Superior Court to act by *one* judge only? Why can it not keep the case and correct some of its own errors so far as practicable by an appellate *post*-trial session before letting a case go to the Supreme Judicial Court unnecessarily? Must every question go up because of a ruling of one judge? Many cases are now considered at various interlocutory stages by different judges.

It is true that G. L. Chap. 212, §2 says that "The court shall be held by one of the justices, "but §1 provides that "*the court* shall consist" of more than one and the word "shall" in §2 does not seem mandatory when the history of the jurisdiction is considered. The purpose of that sentence is to make it clear, as expressly stated in it, that, "*when so held*" (i. e., "by one of the justices") the single justice "shall have and exercise all the power and jurisdiction committed to said court." "The Superior Court" means the court held by one or more justices (See *Com. v. Gedsium*, 261 Mass. 299 and *Catheron v. Suffolk County*, 227 Mass. 598).

The Superior Court has inherited its jurisdiction since its creation in 1859, from the Supreme Judicial Court which originally sat as a full bench for *the trial* of cases until about 1800. Capital cases were so tried until after 1850 and, in the Superior Court, *more* than one judge was required for such cases until 1910. The legislature has not said that the court *cannot* sit with more than one judge if justice requires it. If one judge has the powers and jurisdiction of "the court" two, or more, of the same judges must have it together. The mere use of the word "shall" does not seem to mean that administration by more than one is prohibited. Judges consult each other about law in the lobby. Why not in an appellate session? In Maryland, one judge can try a criminal case without jury but the practice in *capital* cases is to call in two other judges (See Judge Bond's article in *Mass. Law Quart.* for May, 1921, at p. 94). The purpose of providing that one judge shall act for the court is permissive for

economical division of labor, and not to obstruct administration. In *Crocker v. Justices*, 208 Mass. 162, Rugg, C. J., said the courts of general jurisdiction have power to do whatever may be done under the general principles of jurisprudence to secure justice.

For these reasons it has been suggested to us that, if the Superior Court could, and would, try the experiment, perhaps, before 1941, we would then know something one way or another about a matter that has been merely talked about for ten years or more.

This proposal is accompanied by a draft rule which we submit *without recommendation* for the consideration of the Superior Court, the Supreme Judicial Court and the bar, and ask for comment.

Outline of Draft Rule Submitted to the Council

There shall be an appellate session to be held at such times and places as the Chief Justice shall designate and by three justices (or even two) assigned from time to time by the Chief Justice for the rehearing of *questions of law* by the court in cases in which such rehearing is requested as hereinafter provided and in such cases the trial judge shall reserve and report the case after verdict or finding of fact in accordance with Section 111 of Chapter 231 of the General Laws for such rehearing *and* for the determination of the Supreme Judicial Court, if such determination is desired after the decision of the court in the appellate session and shall make such orders as may be necessary to preserve the rights of the parties pending the proceedings in the appellate session. Such rehearing may be requested by any party, and any party who fails to file an objection to such request within days of notice shall be deemed to have waived objection to rehearing by the court in the appellate session. If after decision by the court in the appellate session a determination by the Supreme Judicial Court is desired by any party, the court in the appellate session shall report the case under said Section 111 of Chapter 231 as reported by the trial justice together with the action of the court in the appellate session for such determination by the full court.

The rule could be by joint, or concurrent, action of the Superior Court and the Supreme Judicial Court. The Supreme Judicial Court could adopt a rule, or standing order, approving the Superior Court rule and formally recognizing the postponement of final action of the Superior Court, until the decision of the appellate session, as a condition of appellate proceedings in the Supreme Judicial Court.

Is there anything to prevent such rules under some of the broad language of General Laws (Ter. Ed.) Chap. 213, §3, clauses "First", "Second," "Eighth" and "Ninth", and Chapter 211, Sec. 3 and Chap. 212, Sec. 14A? Six months, or a year, of such an experiment might be illuminating, as enough lawyers, probably, would co-operate to see how it worked in saving time and expense, as they have done with pre-trial and auditors in tort cases (a judicial experiment which was a great extension of the original idea of auditors).

Dean Pound's address in the *American Bar Association Journal* for September, 1939, on the "huge task" before the courts of the

country, suggests the need of a revival of considered judicial experiment in the administrative field wherever possible. The biennial amendment in Massachusetts seems to emphasize the need of it here by courts which have powers broad enough to experiment with, because that is what powers, such as they are, exist for. Should the court experiment with an appellate session which could be abandoned, or improved, in the light of experience? *We submit the question to the bench and bar and ask for their assistance.*

Another suggestion has been made that to avoid diversity of decision some form of joint appellate division of the Superior and District Courts be worked out to sit (as the District Court divisions now sit), not as an independent court, but as an appellate division of the court in which the case arises.

Still another suggestion is that, instead of focussing attention on an intermediate tribunal, some thought might be given to an alternative reviewing body, applications to which would constitute a waiver of the right to go to the Supreme Judicial Court. This idea could be applied to a division, or session, established by rule as well as by statute. Such election would be analogous to the present election to enter a case in the District or Superior Court. Some cases from the outset are bound for the court of last resort. New questions, and cases involving large amounts, are examples. The fact that the great bulk of legal disputes stop with the trial court, and that less than 15% of those going to the appellate divisions go on to the Supreme Judicial Court leads to the belief that the great majority of reviews would stop in the appellate divisions. This suggestion is based on the view that one trial and one review is all that the public ought to be asked to pay for. It would bring finality of decision as between the parties in the particular case, but it would be open to the objection of causing uncertainty of the law, already referred to unless that uncertainty could be met in some way.

3. Common Trust Funds—Senate 228 and House 2245

By Resolves, Chap. 18 of 1939, the legislature requested the Judicial Council "to investigate the subject matter of . . . House Document numbered 2245 relative to common trust funds and to include its conclusions and recommendations . . . in its annual report for the year 1940".

The proposal for legislation on this subject was made by the Massachusetts Commissioners on Uniform State Laws following the recommendation of the National Conference of Commissioners on Uniform State Laws, which was submitted to, and approved by, the representatives of the American Bar Association in January, 1939. The committee of the National Conference which prepared the

proposed uniform act consisted of the following members of that conference:

George G. Bogert..... University of Chicago Law School, Chicago, Illinois, *Chairman*
George E. Beers.....New Haven, Connecticut
John C. Bills.....Detroit, Michigan
Fred T. Hanson.....McCook, Nebraska
L. Barrett Jones.....Jackson, Mississippi
Harry P. Lawther.....Dallas, Texas
Willard B. Luther.....Boston, Massachusetts
Henry Upson Sims.....Birmingham, Alabama
John H. Wigmore.....Chicago, Illinois
William F. Bruell.....Redfield, South Dakota, *Chairman*, Uniform Property Acts Section

The draft act, as thus presented, to the Massachusetts legislature was numbered *Senate 288*. A copy of this bill together with the "Prefatory Note" in regard to it, prepared by the Committee of the National Conference, is reprinted in Appendix A of this report.

Following the discussions before the legislative committee, a new draft was prepared and reported by the committee, numbered *House 2245*, which was thereafter referred to the Judicial Council. This bill is also reprinted in Appendix A.

The Council has received a memorandum in support of this bill (*House 2245*). As the report of the Judicial Council is to be made in its annual report for 1940 by the request of the legislature and as the subject matter of the proposed legislation is one of importance, the Council believes that it is in the public interest that this memorandum together with copies of the bills should be called to the attention of the public and of the members of the legal profession in order to stimulate discussion and a broader understanding of the proposed legislation and the reasons submitted for it to the Council.

Some form of common trust fund legislation appears already in the states of: Delaware, Indiana, Kentucky, Louisiana, Minnesota, New York, North Carolina, Pennsylvania and Vermont. Copies of the statutes of these states were studied in connection with the preparation of *House 2245*, and have been submitted to the Council.

Common trust funds also are provided for in Regulation F17 for national banks under the Federal Reserve Act. While this §17 of Regulation F regulates national banks only, yet, because of the Federal Revenue Act, they govern all other common trust funds whether operated by banks or individuals owing to the fact that unless such funds are operated in accordance with §17 they are taxable as corporations (See *Brooklyn Trust Co. v. Commissioner*, 80 Fed. (2nd) 865, certiorari refused 298 U. S. 659). Accordingly,

Regulation F, §17, is also reprinted in this report as it is part of the background of the whole problem to be studied. A further discussion of the common trust fund statutes will be found in the *Columbia Law Review* for December, 1937 (pp. 1384-1396); cf. Scott on Trusts, Vol. 2, §§227-9.

We express no opinion on the subject at the present time, but invite comments and suggestions in regard to the subject, and particularly in regard to *House 2245* or any part of it for the assistance of the Judicial Council.

The papers printed in Appendix A for convenient study by those interested are in the following order:

1. Prefatory note of the Committee of the National Conference.

2. Senate 288, the "Uniform Common Trust Fund Act".

3. House 2245, reported by the Committee on Banks and Banking in place of *Senate 288* and referred to the Judicial Council by Resolves Chapter 18.

4. Memorandum submitted to the Judicial Council in support of *House 2245*.

5. Section 17 of Regulation F of the Federal Reserve System, relative to Common Trust Funds held by National Banks.

6. Extract, from Prof. Scott's recent Treatise on "Trusts".

4. Common Law Assignments—House 237 and House 641

By Resolves, Chap. 20, the legislature requested the Judicial Council

> ". . . to investigate the subject matter of current house document numbered two hundred and thirty-seven, relative to regulating common law assignments for the benefit of creditors and providing for speedy and orderly completion of all proceedings thereunder, and of current house document numbered six hundred and forty-one, relative to making trusts for the benefit of creditors subject to the jurisdiction of probate courts, and to include its conclusions and recommendations, if any, in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, *in its annual report for the year nineteen hundred and forty.*"

For the purpose of inviting discussion, criticism, and suggestions by members of the Bar, the subject is discussed and *a tentative draft of an act*, prepared by the Council, is submitted at this time *for the sole purpose of receiving suggestions thereon* before an answer to the request by the legislature is prepared for its annual report for 1940.

For all practical purposes the assignment for the benefit of creditors is unregulated. Certain very limited aspects are covered by General Laws, Chapter 203, Sections 40, 41 and 42. Once a valid assignment for the benefit of creditors has been made, there is no check on the activity or conduct of the assignee, except the right

of any assenting creditor to take the initiative and call for an accounting.

The total number of assignments in the Commonwealth in any given year could be determined only by inquiry at the Clerk's office of each city and town in the state. No statistics whatever are available indicating the value of the assets involved, nor the expenses of administration, nor the ultimate returns to creditors. Inquiry at the clerk's office in the City of Boston indicates the number of such assignments from 1929 to this year as follows:

1929	258	1935	139
1930	291	1936	115
1931	274	1937	104
1932	374	1938	151
1933	204	1939	91
1934	165	to November 9th	

It seems obvious that the assignment for the benefit of creditors is merely one class of case in which a fiduciary is handling property which does not belong to him for the benefit of the real owners, namely, the creditors, without the initiative for this trusteeship having been taken by the real owners. Creditors of an assignor are confronted with three alternatives:

1. To assent to the assignment, taking whatever dividend may result;
2. To treat the assignment as an act of bankruptcy and file a bankruptcy petition;
3. To do nothing and retain their debts against the debtors.

At present no bond or other form of surety for the faithful performance of the trust is required from the assignee, although bankruptcy receivers and trustees and equity trustees are compelled to file bonds approved by the Court in which the proceedings are pending.

The Council believes that the assignment for the benefit of creditors should be subject to judicial regulation and that this regulation should be analagous to that imposed on trustees under written instruments in the Probate Court and receivers in equity in the Superior Court.

The Council is not prepared at the present time to make a definite recommendation but the following draft is submitted for consideration.

Tentative Draft Act

Section 1. Section 41 of Chapter 203 of the General Laws is hereby amended by striking out the words:

"and deposits with the Clerk of the Town where the principal business of the debtor is carried on, a copy of said assignment which shall be filed and indexed by said Clerk upon receiving a fee of $1.00 therefor,"

and substituting therefor the following:

"and file with the Clerk of the Superior Court for the County within which the principal business of the debtor is carried on, a copy of said assignment, which shall be filed, indexed and numbered by said Clerk upon receiving a fee of $3.00 therefor, according to the procedure now in vogue in equity actions in said Court."

Section 2. Said Chapter 203 is further amended by inserting a new Section 43 as follows:

"No assignment made by a debtor residing in the Commonwealth to a trustee for the benefit of his creditors shall be valid either at common law or under the provisions of Sections 40, 41 and 42 of Chapter 203 of the General Laws unless before entering upon the performance of his duties, such trustee shall give bond with sufficient sureties in such sum as the Superior Court may order, payable to the Chief Justice of said Court and his successors, and with conditions substantially as follows:

To make and return to the Superior Court at such time as it orders a true inventory of all the real and personal property belonging to him as trustee which at the time of the making of such inventory shall have come to his possession or knowledge.

To manage and dispose of such property and faithfully to perform his trust relative thereto according to law and to the terms of the trust instrument.

To render upon oath at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the Court, a true account of the property in his hands and of the management and disposition thereof, and also to render such account at such other times as said court orders.

At the expiration of his trust to settle his account with the Superior Court, and to pay over and deliver all the property remaining in his hands or due from him on such settlement to the person or persons entitled thereto.

No bond required under the provisions of this section shall be sufficient unless it has been examined and approved by said court, or the clerk thereof, and approval over the official signature written thereon.

If the sureties or penal sum of a bond given under the provisions of this section are insufficient, the court may, after notice to the principal in such bond, require a new bond with such surety or sureties and in such penal sum as the court orders."

The Danger of County Domination of State Courts

In its 7th Report in 1931, owing to the views expressed in the report of the Budget Commissioner of the City of Boston, and a passage in the report of the special Commission on County Salaries of 1929, "that the appropriating authorities", which paid the salaries of the District Courts, "should be supreme", the Judicial Council presented a discussion of the relation between the courts and the counties, pointing out that:

"The fact that has been forgotten in all these business arrangements for the distribution of financial control to the county, is that the judges and the other officers of courts are not county servants, although they may be paid by the counties by direction of the legislature."

The Council said:

"Massachusetts cannot afford to allow the officials and the employees of the courts of the state to be regarded and treated merely as county servants . . . .

The bearing of the county control plan in the act of 1930 on this matter was not fully realized by the Judicial Council at the time the act of 1930 was passed or during the investigation of the subject by the special commission, and for this reason no comment was made on the subject at that time."

The Council concluded its study as follows:

"We recommend that no more court officials or employees be brought within county control, and as to such court positions as are already included in such control, in our opinion it would be wiser if the state should resume its control over its courts.

We also suggest that it is worth consideration whether the whole chance of the danger (of increasing local political domination) which we have described, might not be more effectively and permanently eradicated by making the entire judicial cost state-borne with a reassessment of a just part upon the several counties."

Two years later, this subject came to the surface again in an illuminating manner when the functioning of the Superior Court in Suffolk County was almost stopped by local politics. That situation was discussed in the 9th Report of the Council (pp. 47–49) and the following recommendation was made:

A situation calling for the unseemly spectacle of a legal contest between the court and the county paymasters in regard to payment of necessary expenses of the work of the court and the consequent interruption of that work should not be allowed to continue or recur. Certainly the persons who furnish supplies and services for operation of the court should not be forced to sue the county for their bills. If there is to be any delay in the payment of the public bills for the operation of the courts, which it is the constitutional duty of the legislature to provide for, that delay should be assumed by the Commonwealth in order that the administration of justice may not be interrupted.

The council then recommended the following draft act:

"Section twelve of chapter thirty-five of the General Laws is hereby amended by adding at the end thereof the following sentence:

"If such bills, payment of which has been duly authorized by the court, are not paid within days by the county officials, duplicate bills with an order of the court for their payment may be delivered to the state treasurer and shall be paid by him on behalf of the commonwealth, and reassessed to the proper county."

A similar provision was recommended in regard to the expenses of the Land Court, of the Probate Courts and of the District Courts in the appropriate places in the statutes. None of these recommendations were adopted, however.

The invitation to political domination of the courts in various ways is a natural, continuing and increasing threat of the system of county paymasters for courts which are state institutions, and, as

the whole system of county finance is a constant subject of discussion in these tax conscious days, we believe that the warning against county supremacy of the administration of justice, contained in the passages quoted above from council reports, should be borne constantly in mind.

The usual statistical tables showing the details of business of the various courts will be found in Appendix A of this report.

As the reports of the Judicature Commission of 1919–1920, which recommended the creation of the Judicial Council, and the 15 reports of the council since its creation in 1924, contain the history of, and the reasons for, the statutes which have been passed as a result of those reports, to be found elsewhere, we have attached, as Appendix C, the combined tables of contents of these reports.

This appendix, with the account of the history of the Judicial Council and the results of its work in Appendix A of the 14th Report, will be found useful in studying the purpose and background of statutes and the history of the discussions on a variety of problems relating to the judicial system in the past twenty years.

We have also added, for the same reason, a list of earlier reports of special commissions and legislative committees which bear on the earlier history of statutes.

Respectfully submitted,

FRANK J. DONAHUE, *Chairman*,
JOHN E. FENTON,
JOHN V. PHELAN,
WILFRED BOLSTER,
CHARLES L. HIBBARD,
JOHN AUGUSTINE DALY,
CHARLES A. McCARRON,
FREDERICK J. MULDOON,
NATHAN P. AVERY.

APPENDIX A

COMMON TRUST FUNDS

INFORMATION SUBMITTED IN CONNECTION WITH PROPOSED LEGISLATION REFERRED TO THE JUDICIAL COUNCIL BY THE LEGISLATURE WITH A REQUEST FOR A REPORT BEFORE THE LEGISLATURE MEETS IN 1941.

List of Documents

1. *Preparatory Note to the "Uniform" Act.*
2. *Senate 288 (The "Uniform" Act).*
3. *House 2245 (Reported by the Committee on Banks and Banking and Referred to the Judicial Council).*
4. *Memorandum submitted to the Judicial Council in support of House 2245).*
5. *Section 169 of the Revenue Act of 1936.*
6. *Section 17 of Regulation F of the Board of Governors of the Federal Reserve System.*
7. *Scott on Trusts, Vol. 2, Section 227.9.*

Comments and suggestions are requested for the assistance of the Council in consideration of the matter.

I. PREFATORY NOTE ON THE "UNIFORM COMMON TRUST FUND ACT" SUBMITTED BY THE COMMITTEE OF THE NATIONAL CONFERENCE ON UNIFORM STATE LAWS.

PREFATORY NOTE

A common trust fund is a group of securities set aside by a trustee for investment by two or more trusts operated by the same trustee. It is almost invariably used by banks and trust companies, and not by individual trustees.

The purposes of such a common or joint investment fund are to diversify the investments of the several trusts and thus spread the risk of loss, and to make it easy to invest any amount of trust funds quickly and with a small amount of trouble.

Such a common trust fund cannot legally be operated without statutory sanction, because its operation involves a mixture of trust funds which was not permitted by doctrines of equity. There is a strong sentiment among trust men that the great utility of these common trust funds justifies a statutory exception to the rule regarding the mixture of two or more trust funds.

The Uniform Common Trust Fund Act is a simple enabling statute suitable for adoption by any state which is willing to permit banks and trust companies to set up one or more common trust funds. The Uniform Act does not set out in detail the restrictions on the operation of such common trust funds, except that they must be composed of investments legal for trusts in that state. The reason for not covering in this proposed Uniform State Act the details of the operation

of such a common trust fund is that as a practical matter such details are covered by the regulations issued by the Federal Reserve Board which went into effect December 31, 1937.

The Federal Revenue Act of 1936 provides that a common trust fund shall be taxed as an association on its income unless it is operated in accordance with regulations issued by the Federal Reserve Board. Consequently, every bank or trust company, whether a national or a state institution, will have to operate its common trust funds in accordance with the Federal Reserve Board regulations if it wants to escape the federal corporation income tax, and the difference between such tax and the individual income taxes assessed against the different beneficiaries of the trusts would be so great that no trustee could afford to operate its fund otherwise than in accordance with the Federal Reserve Board regulations.

Therefore, the passage by a state of the Uniform Common Trust Fund Act will enable banks and trust companies in that state to set up one or more common trust funds composed entirely of legal trust investments for its fiduciary funds, these common trust funds necessarily being subject to restrictions and regulations of the Federal Reserve Board as they exist from time to time.

SENATE 288 (The "Uniform" Act)

Referred to the Committee on Banks and Banking)

In the Year One Thousand Nine Hundred and Thirty-Nine.

AN ACT CONCERNING COMMON TRUST FUNDS AND TO MAKE UNIFORM THE LAW WITH REFERENCE THERETO.

SECTION 1. *Establishment of Common Trust Funds.* Any bank or trust company qualified to act as fiduciary in this state may establish one or more common trust funds composed of securities legal for trust investments in this state for the purpose of furnishing investments to itself as fiduciary, or to itself and another or others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust fund or funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship or by an amendment thereof, and if, in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciary or co-fiduciaries to such investment.

SECTION 2. *Court Accountings.* Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the probate court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

SECTION 3. *Uniformity of Interpretation.* This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 4. *Short Title.* This act may be cited as the Uniform Common Trust Fund Act.

SECTION 5. *Severability.* If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without

the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 6. *Repeal.* All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

SECTION 7. *Time of Taking Effect.* This act shall take effect and shall apply to fiduciary relationships then in existence or thereafter established.

HOUSE 2245

(Reported by the Committee in Banks and Banking and Referred to the Judicial Council with a Request for a Report in 1940)

HOUSE OF REPRESENTATIVES, May 2, 1939

The committee on Banks and Banking, to whom was referred the petition (accompanied by bill, Senate, No. 288) of Joseph F. O'Connell, Jr., for legislation relative to common trust funds and to make uniform the laws relating thereto, report the accompanying bill (House, No. 2245).

For the committee,

DOUGLASS B. FRANCIS.

AN ACT RELATIVE TO COMMON TRUST FUNDS.

SECTION 1. Any individual or corporation holding property as trustee, guardian or conservator may establish and maintain one or more common trust funds as hereinafter defined, and may invest in participations in any such common trust fund established and maintained by him or it property held by him or it, as such trustee, guardian or conservator, unless the instrument under which such property is held, or the decree appointing such trustee, guardian or conservator, otherwise provides, and no other property shall be so invested. Participations shall be equal proportionate interests in the common trust fund. Each such common trust fund shall be administered in accordance with a written declaration of trust which shall have been filed in the registry of probate in the county in which such individual or corporation resides or has his or its principal place of business.

SECTION 2. Prior to making the first investment of any such property held in a trust in participations in a common trust fund, notice of intention so to do shall be sent by registered mail, postage paid, addressed to each person having a vested interest in such trust, and if any such person shall object in a writing received by the trustee within ten days from said mailing no such investment shall be made.

SECTION 3. If the persons or corporations maintaining a common trust fund hold property as trustee, guardian or conservator together with a co-fiduciary or co-fiduciaries, investment of such property in participations in a common trust fund may be made only with the written consent of such co-fiduciary or co-fiduciaries and shall be withdrawn upon the written request of any co-fiduciary.

SECTION 4. Premiums paid on the purchase of interest-bearing securities need not be amortized.

SECTION 5. An account of the administration of each common trust fund shall be filed annually in the probate court in which the declaration of trust has been filed and application for its allowance shall be made in accordance with

section twenty-four of chapter two hundred and six of the General Laws, as amended. The allowance of such an account as to all matters shown therein shall be conclusive upon all persons then or thereafter interested in the funds invested in said common trust fund.

SECTION 6. A participation in a common trust fund shall be acquired or surrendered by any such trustee, guardian or conservator on payment in full of its proportion of the value of the assets of the common trust fund as computed in good faith by the trustee thereof at fair market value as of a date not more than two business days prior to the acquisition or surrender.

SECTION 7. No participation in a common trust fund shall be acquired by any trustee, guardian or conservator while any investment therein is such as would then not be a proper investment for a trustee or then not be readily marketable, or which would result in any such trust, guardianship or conservatorship having participations in common trust funds of a total value in excess of twenty-five thousand dollars as computed in accordance with the provisions of the preceding section, or any such inter vivos trust created after the date of said declaration of trust having a participation in common trusts of a total value of less than four thousand dollars.

SECTION 8. The trustee, guardian or conservator holding participations in a common trust fund shall be entitled to the usual compensation for his or its services as such out of the funds of such trust, guardianship or conservatorship and to no extra or additional compensation out of the common trust fund or because of the investment therein of the funds of such trust, guardianship or conservatorship. No fee, commission or compensation whatsoever for management of a common trust fund shall be paid from any common trust fund to any person or corporation.

SECTION 9. The declaration of trust of a common trust fund may contain by reference or otherwise any or all of the foregoing provisions and such other or further provisions as shall not be in conflict with the foregoing provisions.

MEMORANDUM SUBMITTED TO THE JUDICIAL COUNCIL IN SUPPORT OF HOUSE 2245

DEFINITION.—A common trust fund is a fund established by a fiduciary in which funds held by that fiduciary as trustee under various trusts and as guardian or conservator are combined for the purpose of facilitating investment.

PURPOSE.—The dominant purpose of a common trust fund is to secure diversity of investment for fiduciary accounts too small to be able to attain it otherwise. Every trustee realizes that his smaller accounts are not invested as advantageously as his larger ones because they cannot be. Through combination they can have the same advantages as the larger trust.

The secondary purpose lies in the expectation that combination will produce economies in the fiduciary's cost of administration and thus allow reduction of minimum fees so that persons of smaller means can make trusts, where it is advisable, at reasonable cost.

See 37 Columbia Law Review 1384, and the preface to the proposed Uniform Common Trust Fund Act as printed by the Commissioners on Uniform State Laws and the American Bar Association.

NEED FOR LEGISLATION.—Without legislation the combination of small trusts for investment in a common trust fund is impractical. Only by legislation can existing trusts be given the benefit of combination and even as to future trusts the trustee is seldom in the position not only of knowing that the size of the trust when it becomes operative will be such as to render use of a common trust fund advisable, but also of being able to suggest the insertion of a permissive clause before the instrument is executed. In the absence of legislation so few trusts would be available for combination that practically speaking a common trust fund would not be feasible. If there are any doubts as to the constitutionality of so legislating as to existing trusts, see the analogy of the statute giving a power of sale to trustees. Acts of 1918, Ch. 68, now G. L. Ch. 203, Section 19. Also see *Long* v. *Simmons Female College*, 218 Mass. 135, holding constitutional the legislation passed as a result of the Boston Fire allowing trustees with the approval of the Probate Court to mortgage real estate for the purpose of re-building and to deduct from income to pay the mortgage.

PRECEDENTS.—The principle of collective trust investment is not new in Massachusetts. The charters of the older trust companies, which were special acts of the legislature, authorized such collective investment in what was termed a general trust fund and these provisions were the basis for the authorization in the general trust company law now embodied in Section 59 of Chapter 172 of the General Laws. The references in this and other sections to a "general trust fund" so lack definition, however, that corporate trustees do not feel that they can operate under this permission. Ch. 163 of the Mass. Acts of 1939 permits the Bishop and Trustees of the Protestant Episcopal Church to operate a common trust fund. Elsewhere, true common trust funds are authorized by Regulation F of the Board of Governors of the Federal Reserve System and by statute in the following states: Delaware, Indiana, Kentucky, Louisiana, Minnesota, New York, North Carolina, Pennsylvania and Vermont.

EFFECT OF FEDERAL INCOME TAXATION AND REGULATION F.—In the case of *Brooklyn Trust Co.* v. *Commissioner*, 80F (2d) 865, a common trust fund was held subject to Federal income tax as a corporation. Certiorari refused 298 U. S. 659.

The income of participants in a common trust fund should obviously not be taxed at the high corporation rates, and accordingly Congress to remedy the situation provided in the Revenue Act of

1936, Now Sec. 169 of the Revenue Act of 1938, that common trust funds should be taxed on the same basis as trusts, except that undistributed income as well as income actually distributed, shall be taxed to the beneficiaries.

The Revenue Act defined the common trust funds that should receive this treatment as funds (a) operated by banks exclusively for the collective investment of their fiduciary accounts, and (b) carried on under regulations of the Board of Governors of the Federal Reserve System.

Such regulations were issued in December 1937 and Regulation F, Section 17, should be studied to note the restrictions therein contained. These restrictions are legally binding on national banks only, but are binding, because of the Revenue Act, on all banks and trust companies, as unless they obey them their fund incurs unnecessarily heavy taxation. An individual trustee operating a common trust fund could not come under the exception in the Revenue Act, though query whether his fund might not be so set up and operated as to be taxable as a trust rather than as a corporation anyway.

THE ESSENTIALS OF AN ENABLING ACT.—The first essential is of course, the obvious one that permission be given to combine the various constituent fiduciary accounts in the common trust fund.

The next is that the trustee should not only be permitted, but also, it is submitted, be required to settle the accounts of the common trust fund annually in the Probate Court. This account will affect a large number of participating trusts and will be complicated by the entrance or withdrawal of participations. The Trustee therefore should be required to settle the account annually and the beneficiaries of participating trusts be thereby given a day in court. Conversely there should only be this one day in court. If the account of the common trust fund is not conclusively settled, the beneficiary and guardian ad litem in a participating trust would have the right, and in the case of the latter perhaps the duty to examine all transactions in the common trust fund. The trustee might thus have to justify the same transaction in a large number of proceedings with possibly different results in different counties, in addition to spending most of his office time explaining his accounts and exhibiting the securities to enquiring parties.

Next the trustee should be exempted from the duty of amortizing bond premiums. The adjudicated cases in Massachusetts do not include any case where the trustee was held liable for failure to amortize, but it is probable that this step would be taken if a substantial amount of premiums were involved, and this is the position taken in the *Restatement of the Law of Trusts*, Sec. 239 F. See also *Newhall's Settlement of Estates* 3 Ed. Sec. 381. Amortization on any

fair basis is impossible in a common trust fund. A bond bought at 110 when Trust A was a participant may be selling at 120 when Trust B joins the fund, and when Trust C joins may have been forced down to par long before its maturity by a change in interest rates. No amortization can be fair to all those three trusts. Furthermore, in a common trust fund, with the activity due to accounts entering and leaving, the theory that every bond will be held to maturity becomes increasingly fictitious and it is probable that discounts will balance premiums by and large.

Finally, an enabling act should contain nothing inconsistent with Regulation F and should not go too much into detail lest the quite possible future changes in the regulation force too frequent amendment.

THE UNIFORM COMMON TRUST FUND ACT.—This Act, introduced as Senate 288 in the 1939 session, is deficient on the accounting and amortization points and the Massachusetts Commissioners expressed before the Legislative Committee a willingness to accept curative amendments. While Section 2 of the Act would probably permit trustees to settle their accounts, it is not mandatory and doubt has even been expressed as to whether the permission would be effective.

THE INDIVIDUAL TRUSTEE.—The Uniform Act extends its permission only to corporate fiduciaries, and the reason given before the Legislative Committee was that it was extremely unlikely that an individual trustee would want to operate a common trust fund. This is probably true. A common trust fund is more expensive to operate than the usual trust, because of the work required by appraisals and the admission and retirement of participations. To produce a net economy a considerable number of small trusts must be available to take advantage of it. The individual who is only incidentally a trustee will not have such a number of small trusts while the professional individual trustee is apt to avoid small accounts. Further, the common trust fund operated by the individual trustee is not given exemption from taxation as a corporation by the Revenue Act so that the individual trustee would have to feel that he could so draw the instrument establishing his fund and could so operate under it as to avoid the holding in *Brooklyn Trust Co.* v. *Commissioner*, supra.

Nevertheless there appears to be a feeling that the individual trustee should not be discriminated against, and probably he should be included in the permission. A requirement that the accounts of the common trust fund be settled annually gives better protection against negligence or dishonesty than a small trust now enjoys, and the trustee will either have given a bond with sureties in each individual trust invested in the fund or will have been exempted from so doing by the wish of the maker of that trust.

DESIRABLE SAFEGUARDS.—Even should banks alone be covered by the bill it may be that the compulsion of the Revenue Act would not prove effective in every case to cause observance of Regulation F, while if permission is extended to individual trustees there will be no such compulsion. Accordingly, certain safeguards should be contained in a bill, though as has already been said they should not be so detailed as to conflict with Regulation F or its possible changes. The draft suggested to the Committee on Banks and Banking as an alternative to the Uniform Act and printed as House 2245 is an attempt to include proper safeguards.

(a) *Exclusively for Fiduciary Accounts.*—A common trust fund is exclusively for fiduciary accounts and no participations should be held directly by any person other than the trustee of that fund in other fiduciary capacities. See Section 1 of House 2245.

(b) *Each Unit of Participation Equal.*—Various trusts will hold a varying number of units of participation, but all units should be equal and without preference. See Section 1 of House 2245.

(c) *Notice.*—Regulation F requires notice to the beneficiaries of a trust prior to its first participating in the fund and extending this to give a beneficiary a veto power seems appropriate. See Section 2 of House 2245.

(d) *Participation and Withdrawal to be at Market.*—The trusts that are the first to enter the fund will acquire units of participation at some arbitrary value per unit, say $100. Thereafter admission or retirement of participations should be at their exact proportion of the current market value of the fund. A two-day period after the appraisal date, following Regulation F, seems a reasonable and necessary allowance for making the appraisal. See Section 6 of House 2245.

(e) *No Participation Unless all Investments Proper and Readily Marketable.*—An investment proper when made by the common trust fund might become improper and, as a trust later participating would in substance be acquiring an interest in that investment no admission should be made till that investment is sold, distributed in kind, or segregated for liquidation for the benefit of then participants.

The feature of ready marketability is more bothersome. In practice mortgages would be the only investments that would not come within this phrase. A common trust fund should not be a disguised mortgage pool. Regulation F requires 40 per cent liquidity only, but in view of recent experiences with mortgages it was deemed better to exclude them entirely from the common trust fund. This does not necessarily exclude them from the small trust, which may invest directly in such a mortgage in addition to holding units of participation in the common trust fund. See Section 7 of House 2245.

(f) *Maximum Limit on Trusts Participating.*—The common trust fund is designed for the smaller trusts, it should not be a catch-all for all trusts. Regulation F limits the amount that a trust may invest in common trust funds to $25,000. In Massachusetts probably $50,000 would have been a wiser limit, but it was deemed better to conform to the regulation.

Some concern has been expressed on behalf of the savings banks lest amounts that should be with them be attracted away by a common trust fund. Whether or not such concern would prove legitimately justified, the exclusion of future trusts inter vivos of less than $4,000 is incorporated in the draft. Existing trusts and future testamentary trusts would not affect the savings banks. Even if an individual with less than $4,000 should want a trust, the wildest hopes of reduction in costs would not contemplate that so small an amount could be so handled at a fee not out of proportion. See Section 7 of House 2245.

(g) *No Extra Compensation.*—Finally, the trustee of a small trust invested in the common trust fund should be entitled to the customary reasonable fees in respect of the income received by that trust from the fund and in respect of the capital of the small trust on its termination. There should not be, however, any additional fees or "loading charge" of any sort because of the common trust fund, nor should the common fund pay a fee to any third person for management. See Section 8 of House 2245.

Conclusion.—The authorization of common trust funds will remove a distinct investment handicap from the small trust. It should permit a substantial reduction in minimum fees and hence afford trust service at a reasonable cost to smaller amounts. It is believed that the safeguards in House 2245 are adequate to prevent abuse. An enabling act should not be too detailed, and before adding any additional limitations they should be discussed thoroughly to make certain that they are practicable and consistent with Regulation F.

Section 169 of the Revenue Act of 1936

Section 169. Common Trust Funds

(a) Definitions.—The term "common trust fund" means a fund maintained by a bank (as defined in section 104)—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

(b) TAXATION OF COMMON TRUST FUNDS.—A common trust fund shall not be subject to taxation under this title, Title IA, or section 105 or 106 of the Revenue Act of 1935, and for the purposes of such titles and sections shall not be considered a corporation.

(c) INCOME OF PARTICIPANTS IN FUND.—Each participant in the common trust fund shall include in computing its net income its proportionate share, whether or not distributed and whether or not distributable, of the net income of the common trust fund. The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. The proportionate share of each participant in the amount of interest specified in section 25(a) received by the common trust fund shall for the purpose of this Supplement be considered as having been received by such participant as such interest.

(d) ADMISSION AND WITHDRAWAL.—No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(e) RETURNS BY BANK.—Every bank (as defined in section 104) maintaining a common trust fund shall make a return under oath for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by this title, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return filed by the bank under section 52.

(f) DIFFERENT TAXABLE YEARS OF COMMON TRUST FUND AND PARTICIPANT.—If the taxable year of the common trust fund is different from that of a participant, the proportionate share of the net income of the common trust fund to be included in computing the net income of the participant for its taxable year shall be based upon the net income of the common trust fund for any taxable year of the common trust fund (whether beginning on, before, or after January 1, 1936) ending within the taxable year of the participant.

REGULATION F OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Section 17. Common Trust Funds.

(a) IN GENERAL.—Funds received or held by a national bank as fiduciary may be invested collectively in any Common Trust Fund established and maintained in accordance with the provisions of this section whenever the laws of the State in which the national bank is located authorize or permit such investments by State banks, trust companies, or other corporations which compete with national banks.

As used in this regulation the term "Common Trust Fund" means a fund maintained by a national bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, or guardian.

The purpose of this section is to permit the use of Common Trust Funds, as defined in section 169 of the Revenue Act of 1936, for the investment of funds held for true fiduciary purposes; and the operation of such Common Trust Funds

as investment trusts for other than strictly fiduciary purposes is hereby prohibited. No bank administering a Common Trust Fund shall issue any document evidencing a direct or indirect interest in such Common Trust Fund in any form which purports to be negotiable or assignable. The trust investment committee of a bank operating a Common Trust Fund shall not permit any funds of any trust to be invested in a Common Trust Fund if it has reason to believe that such trust was not created or is not being used for bona fide fiduciary purposes.

Common Trust Funds administered under this section shall be subject to the following requirements:

(1) Assets in a Common Trust Fund shall be considered as assets held by the bank as fiduciary;

(2) A bank administering a Common Trust Fund shall not invest any of its own funds in such Common Trust Fund and if a bank, because of a creditor relationship or any other reason, acquires any interest in a participation in a Common Trust Fund under its administration the participation shall be withdrawn on the first date on which such withdrawal can be effected in accordance with the provisions of this section;

(3) A bank administering a Common Trust Fund shall not have any interest* in the assets held in such Common Trust Fund, other than in its capacity as fiduciary, except to the extent permitted for a temporary period as provided in the immediately preceding paragraph.

(b) COMMON TRUST FUNDS FOR INVESTMENT OF SMALL AMOUNTS.—Subject to all other provisions of this regulation except subsection (c) of this section, cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage may be invested, with the approval of the trust investment committee, in participations in a Common Trust Fund, provided the total investment of the funds of any one trust in one or more such Common Trust Funds shall not exceed $1,200.

(c) COMMON TRUST FUNDS FOR GENERAL INVESTMENT.—Subject to all other provisions of this regulation except subsection (b) of this section, funds received or held by a bank in its capacity as trustee, executor, administrator, or guardian may be invested in participations in a Common Trust Fund. All participations in such a Common Trust Fund shall be on the basis of a proportionate interest in all of the assets of the Common Trust Fund.

(1) *Common Trust Fund to be operated under written plan.*—Each Common Trust Fund administered by a bank shall be established and maintained in accordance with a written plan (referred to herein as the Plan) approved by a resolution of the bank's board of directors and approved in writing by competent legal counsel. The Plan shall provide that the Common Trust Fund shall be administered in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks, and shall contain full and detailed provisions not inconsistent with the provisions of such rules and regulations as to the manner in which the Common Trust Fund is to be

*A bank shall not be deemed to have an interest in assets in which collective investments are made merely because of the fact that the bank owns in its own right other stocks, or bonds or other obligations of a person, firm, or corporation, the stocks, or bonds or other obligations of which are among the assets of a Common Trust Fund.

operated, including provisions relating to the investment powers of the bank with respect to the Common Trust Fund, the allocation of income, profits and losses, the terms and conditions governing the admission or withdrawal of participations in the Common Trust Fund, the auditing and settlement of accounts of the bank with respect to the Common Trust Fund, the basis and method of valuing assets in the Common Trust Fund, the basis upon which the Common Trust Fund may be terminated, and such other matters as may be necessary to define clearly the rights of participants in the Common Trust Fund. A copy of the Plan shall be available at the principal office of the bank for inspection, during all banking hours, to any person having an interest in a trust any funds of which are invested in a participation in the Common Trust Fund; and upon reasonable request a copy of the Plan shall be furnished to such person.

(2) *Trust investment committee to approve participation.*—No funds of a trust shall be invested in a participation in a Common Trust Fund without the approval of the trust investment committee. Before permitting any funds of any trust to be invested in a participation in a Common Trust Fund, the trust investment committee shall review the investments comprising the Common Trust Fund; and, if it finds that any such investment is one in which funds of such trust might not lawfully be invested at that time, funds of such trust shall not be invested in a participation in such Common Trust Fund,

At the time of making the first investment of funds of a trust in a participation in any Common Trust Fund, the bank shall send a notice of such investment to each person to whom an accounting ordinarily would be rendered.

(3) *Common Trust Fund to be audited annually.*—A bank administering a Common Trust Fund shall, at least once during each period of twelve months, cause an audit to be made of the Common Trust Fund by auditors responsible only to the board of directors of the bank. The report of such audit shall include a list of the investments comprising the Common Trust Fund at the time of the audit which shall show the valuation placed on each item on such list by the trust investment committee of the bank as of the date of the audit, a statement of purchases, sales and any other investment changes and of income and disbursements since the last audit, and appropriate comments as to any investments in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the Common Trust Fund.

The bank shall, without charge, send a copy of the latest report of such audit annually to each person to whom an accounting of the trusts participating in the Common Trust Fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

(4) *Value of assets to be determined periodically.*—Not less frequently than once during each period of three months the trust investment committee of a bank administering a Common Trust Fund shall determine the value of the assets in the Common Trust Fund. No participation shall be admitted to or withdrawn from the Common Trust Fund except on the basis of such valuation and on the date of the determination of such valuation or, if permitted by the Plan, within two business days subsequent to the date of such determination. No participation shall be admitted or withdrawn unless, in accordance with

provisions of the Plan, prior to the date of the determination of such valuation, notice of intention to participate or to make such withdrawal shall have been given in writing to the bank administering the Common Trust Fund, or a written notation of the contemplated participation or withdrawal shall have been made in the records of the bank.

(5) *Miscellaneous limitations.*—No funds of any trust shall be invested in a participation in a Common Trust Fund if such investment would result in such trust having an interest in the Common Trust Fund in excess of 10 per cent of the value of the assets of the Common Trust Fund, as determined by the trust investment committee, or the sum of $25,000, whichever is less at the time of investment. If the bank administers more than one Common Trust Fund, no investment shall be made which would cause the aggregate investment of funds of any one trust in all such Common Trust Funds to exceed such limitations. In applying the limitations contained in this paragraph, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal or both of each trust is payable or applicable to the use of the same person or persons, such trusts shall be considered as one.

No investment for a Common Trust Fund shall be made in stocks, or bonds or other obligations of any one person, firm, or corporation which would cause the total amount of investment in stocks, or bonds or other obligations issued or guaranteed by such person, firm, or corporation to exceed 10 per cent of the value of the Common Trust Fund, as determined by the trust investment committee, provided that this limitation shall not apply to investments in obligations of the United States or for the payment of the principal and interest of which the faith and credit of the United States shall be pledged.

No investment for a Common Trust Fund shall be made in any one class of shares of stock of any one corporation which would cause the total number of such shares held by the Common Trust Fund to exceed 5 per cent of the number of such shares outstanding. If the bank administers more than one Common Trust Fund no investment shall be made which would cause the aggregate investment for all such Common Trust Funds in shares of stock of any one corporation to exceed such limitation.

Any bank administering a Common Trust Fund shall have the responsibility of maintaining in cash and readily marketable securities* such part of the assets of the Common Trust Fund as shall be deemed by the bank to be necessary to provide adequately for the needs of participating trusts and to prevent inequities between such trusts. In any event, prior to any admissions to or withdrawals from a Common Trust Fund, the trust investment committee shall determine what percentage of the value of the assets of a Common Trust Fund is composed of cash and readily marketable securities; and if such committee determines that, after effecting the admissions and withdrawals which are to be made pursuant to notice given as required in subdivision (4) of this subsection, less than 40 per cent of the value of the remaining assets of the Common Trust Fund would be composed of cash and readily marketable securities, no admissions to or withdrawals from the Common Trust Fund shall be permitted as of the valuation date upon which such determination is made, except that ratable distribution upon all participations is not prohibited.

*A readily marketable security within the meaning of this section means a security which is the subject of frequent dealings in ready markets with such frequent quotations of price as to make (a) the price easily and definitely ascertainable and (b) the security itself easy to realize upon by sale at any time.

(6) *Distribution upon withdrawal of participation.*—When participations are withdrawn from a Common Trust Fund distributions may be made in cash or ratably in kind, or partly in cash and partly ratable in kind, provided that all distributions as of any one valuation date shall be made on the same basis. Before any distribution in cash is made, the trust investment committee shall determine whether any investment remaining in the Common Trust Fund would be unlawful for one or more participating trusts if funds of such trusts were being invested at that time; and no distribution shall be made in cash until any such unlawful investment shall have been eliminated from the Common Trust Fund either through sale, distribution in kind, or segregation as provided in the subdivision immediately following hereafter.

(7) *Segregation of investments.*—If for any reason an investment is withdrawn in kind from a Common Trust Fund for the benefit of all trusts participating in the Common Trust Fund at the time of such withdrawal and such investment is not distributed ratably in kind it shall be segregated and administered or realized upon for the benefit ratably of all trusts participating in the Common Trust Fund at the time of withdrawal.

(8) *Management of Common Trust Fund and fees.*—A national bank administering a Common Trust Fund shall have the exclusive management thereof and shall not charge a fee for the management of the Common Trust Fund, or receive, either from the Common Trust Fund or from any trusts the funds of which are invested in participations therein, any additional fees, commissions, or compensations of any kind by reason of such participation. The bank shall not pay a fee, commission, or compensation out of the Common Trust Fund for management. Nothing in this paragraph shall be construed as prohibiting a bank from reimbursing itself out of a Common Trust Fund for such reasonable expenses incurred by it in the administration thereof as would have been chargeable to the respective participating trusts if incurred in the separate administration of such participating trusts.

(9) *Effect of mistakes.*—No mistake made in good faith and in the exercise of due care in connection with the administration of a Common Trust Fund shall be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake.

SCOTT ON TRUSTS
VOLUME 2 SECTION 227.9

"There is undoubtedly an advantage to the beneficiaries of the trust in thus commingling trust funds. In this way they obtain the advantage of diversification which it is difficult if not impossible to obtain where a trust estate is small. Moreover there is an advantage to the trustee, since it is easier to make and to supervise investments in this way than it is where separate investments are made for many small trust estates. The difficulty is, however, that it is at best doubtful whether the trustee can properly commingle the funds of several estates in making investments unless this is authorized by the terms of the trust. This is true even though all the securities held in the common fund are in themselves proper trust investments, and certainly if they are not all proper trust investments under the law of the state which governs the administration of the trusts, the investment is improper unless authorized by the terms of the trusts. Moreover, there was

formerly a question whether the common trust fund was to be treated as an association which was subject to an income tax.

"Prior to the enactment of recent legislation a few corporate trustees set up common trust funds and invested funds of trusts administered by them in these common trust funds when authorized to do so by the terms of the trusts. This form of investment has been greatly facilitated by recent legislation. In the first place the question of liability for a federal income tax has been dealt with by a federal statute and by rules of the Federal Reserve Board. The Federal Revenue Act of 1936 has exempted common trust funds from taxation as corporations or associations. The Act defines a common trust fund as a fund maintained by a bank "(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, and (2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks." The rules of the Board of Governors of the Federal Reserve System make detailed provision with respect to these common trust funds administered by national banks. The fund must be maintained solely for trusts and estates administered by the bank for fiduciary purposes, and no funds of the bank or of any outsider can be invested in the common trust fund. The bank is authorized to invest cash balances held by it in its fiduciary capacity which it considers to be individually too small to be invested separately to advantage, and the total investment of the funds of any one trust in one or more of such common trust funds must not exceed $25,000. There are detailed rules as to the administration by the bank of such funds. The bank is to receive no fee for the management of the common trust fund and is prohibited from paying fees for the management of the fund.

"In a number of states statutes have been enacted permitting the investment of trust money in such common trust funds. Such investment is permitted even though not expressly authorized by the terms of the trusts. The statutes differ in their provisions, some merely permitting the establishment of common trust funds, others making detailed provision for their administration. Unless it is otherwise provided by the statute, it would seem that the statutory authorization to invest in the common trust fund is applicable to trusts created prior to the enactment of the statute, since it is held that where a statute specified the types of investments which are legal for trustees the provisions which are in force at the time when the investment is made are controlling, rather than the provisions in force at the time when the trust was created."

APPENDIX B

SUMMARY OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

The act creating the Judicial Council (reprinted at the beginning of this report) provides that the Council shall study "the work accomplished and the results produced by the judicial system and its various parts" and "shall report annually upon the work of the various branches."

The annual periods reported by the different courts are not the same, some reporting for the last calendar year while others report from June 30 to June 30, or from September 1 to September 1, etc. The details as to counties appear below.

SUPREME JUDICIAL COURT

During the year ending August 31, 1939, the Full Bench decided 386 cases of which five were advisory opinions of the justices rendered at the request of the legislature and sixteen cases were decided in which rescripts were filed but no opinions.

The table of full-bench cases since 1875 appears on p. 71. There is also the usual table of Supreme Court business, other than full-bench cases, with more detailed statements from Suffolk county which appears below.

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES

FOR THE YEAR BEGININNG SEPTEMBER 1, 1938 THROUGH AUGUST 31, 1939

(Not including full bench cases)

	Equity	Transferred to Superior Court	Referred to Masters of Auditors	Prerogative Writs	Petitions for Admission to Bar	Other Proceedings
Barnstable	—	—	—	—	—	—
Berkshire	—	—	—	1	—	1
Bristol	—	—	—	9	2	—
Dukes	—	—	—	—	—	—
Essex	1	—	1	9	—	—
Franklin	1	—	—	—	—	—
Hampden	3	—	—	7	—	2
Hampshire	—	—	—	—	—	—
Middlesex	5	2	—	49	—	1
Nantucket	—	—	—	—	—	—
Norfolk	1	—	—	5	—	1
Plymouth	—	—	—	1	—	—
Suffolk	42	5	16	63	1,172	696
Worcester	2	—	—	6	2	1
Totals	55	7	17	150	1,176	702

The details of the business in Suffolk County appear on the following page.

SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK
REPORT
FROM SEPTEMBER 1, 1938 TO SEPTEMBER 1, 1939

	Transferred to Superior Court	Referred to Matters or Auditors	Prerogative Writs	Petitions for Admissions to Bar	
Law Docket	5	16	63	1,172	
Petitions for admission to the Bar					1,172
Petitions for Writs of Mandamus					31
Petitions for Writs of Certiorari					19
Petitions for Writs of Habeas Corpus					10
Petitions for Writs of Error					3
Applications for Discharge under G. L. Chap. 123, Sec. 91					1
Appeals from decision of Appellate Tax Board					22
Total Entries on Law Docket					1,258
Equity Docket					
Suits in Equity					32
Petitions in Equity					5
Informations in Equity					5
Informations by Attorney General (for failure to file returns, etc.)					687
Petitions for Dissolution					1
Petitions under G. L. Chap. 112, Sec. 64					1
Petitions under G. L. Chap. 428, Sec. 5					1
Petitions for appointment of Commissioners (G. L. Chap. 130, Secs. 77 and 78					1
Petitions for Award					3
Petitions for Suspension of Decree of Superior Court					1
Petitions for appointment of member of Franklin Foundation					1
Total Entries on Equity Docket					738
Total Entries on Both Dockets					1,996

THE SUPERIOR COURT

This court consists of a chief justice and thirty-one associate justices. It has unlimited civil, criminal and equity jurisdiction and holds sessions in all of the fourteen counties. It is the only court sitting with juries. The tabulated returns of the clerks under St. 1936, Chap. 31, § 3 for the year ending June 30th, 1939, will be found on pp. 73–83. From these returns it appears that the justices sat 2860½ days with juries and 1637 days without juries, in the pre-trial and trial of *civil* cases,—a total of 4497. They tried 2825 civil jury cases and 1054 civil cases without jury, including 444 equity and 7 divorce cases,—a total of 3879 *civil* trials. The number of trials without jury appears to be about 298 less than last year—the number of jury trials about the same. They sat 1778½ days in the *criminal* sessions. One judge was engaged for about four months on special assignment to hear "hurricane" cases.

District Court judges called in to try misdemeanor cases sat for 678 days (see p. 72). The total number of criminal cases tried in the Superior Court including these misdemeanor cases was 2674 or 172 more than last year.

Allowing for errors in classifications in the returns of thousands of cases from 14 counties, a comparison of the totals in tables 1 and 2 (on pages 73–74) and 6 (on page 78) shows that there were 49,729 civil cases of all kinds pending at the beginning of the year, 28,741 were entered during the year, and 33,351 were disposed of during the year, or 4,611 more than were entered.

The Use of Auditors

The increased use of auditors is mainly in motor vehicle tort cases, and fewer references of such cases are being made, as the time

between entry and trial with jury is reduced. The present plan began in 1935 with 3,521 rules issued. The rules issued in 1936 were 6,271; in 1937—7,485; and in 1938—5,751. The figures for 1939 when available will probably show a further reduction. For tables as to the use and cost of auditors, see pp. 58–59.

As soon as the court is abreast of its business, the reason for motor vehicle tort references will have disappeared.

Comparative tables of civil and criminal business over a period of years appears on page 61.

The pooling of jurors in Suffolk County and the pre-trial sessions are examples of the exercise of its rule-making functions by the Superior Court with marked results. The pooling of jurors for all sessions instead of providing a separate panel for each session has saved the county about $75,000 a year in jury fees.

Pre-Trial

This system which was first installed in August, 1935, in Suffolk County, has been used with success in Middlesex, Worcester, Essex, Hampden and Berkshire Counties, and it is understood the Chief Justice intends to extend it to other counties where the need of it is demonstrated.

In addition to the cases disposed of at the pre-trial calls, this system shortens the trials of cases, and saves the time of attorneys, witnesses and litigants. The actual saving of time and expense cannot be estimated but the results appear below.

SUMMARY OF THE WORK IN THE PRE-TRIAL SESSION IN SUFFOLK COUNTY FROM SEPTEMBER, 1938 TO JULY, 1939

TRIALS

(September, October, November, December, 1938)		
Cases which have been pre-tried and sent to various sessions for trial.		
Jury Sessions	459	
A. Session	140	
Without Jury Sessions	2	
		601
(January, February, March, 1939)		
Jury Sessions	399	
A. Session	121	
Without Jury Sessions	10	
		530
(April, May, June, 1939)		
Jury Sessions	493	
A. Session	98	
Without Jury Sessions	12	
		603
Total trials		1734

NON SUITS
(At Pre-trial Hearing)

September, October, November, December, 1938	27	
January, February, March, 1939	60	
April, May, June, 1939	29	
		116

DEFAULTS
(At Pre-trial Hearing)

September, October, November, December, 1938	27	
January, February, March, 1939	27	
April, May, June, 1939	16	
		70

SETTLEMENTS

(September, October, November, December, 1938)		
Settlements made on pre-trial lists and at pre-trial call	440	
Settlements made on jury lists before cases were sent out for trial	359	
		799
(January, February, March, 1939)		
Settlements made on pre-trial lists and at pre-trial call	363	
Settlements made on jury lists before cases were sent out for trial	257	
		620
(April, May, June, 1939)		
Settlements made on pre-trial lists and at pre-trial call	329	
Settlements made on jury lists before cases were sent out for trial	284	
		613
Total Settlements		2032

NON SUITS AND DEFAULTS
(At Pre-trial Hearing)

September, October, November, December, 1938	19	
January, February, March, 1939	28	
April, May, June, 1939	8	
		55

CONTINUANCES

September, October, November, December, 1938	86	
January, February, March, 1939	99	
April, May, June, 1939	114	
		299

Total number of cases tabulated above	4306
Cases which have been pre-tried and assigned for trial on the jury lists but have not yet been reached on said lists	737
Total	5043

PRE-TRIAL IN MIDDLESEX COUNTY IN 1939

There were fifteen days of pre-trial.

Cases pre-tried	582
Cases settled	169
Cases non-suited	41
Cases defaulted	26
Cases non-suited and defaulted	16
Cases discontinued	4
Cases wherein jury trial waived	41
Cases sent to auditors, facts final	8
Cases sent to auditors, facts not final	3

PRE-TRIAL IN HAMPDEN COUNTY, 1939

"We had in this county during the year 1939, six days of pre-trial calls.

February 3, 1939, at which time 102 cases were pre-tried
March 24, 1939, at which time 81 cases were pre-tried
May 24, 25, 1939, at which time 154 cases were pre-tried
November 2, 3, 1939, at which time 189 cases were pre-tried

"The number of cases reported settled at each pre-trial call would average about twenty.

"You will note that the number of cases reported settled at the call appears to be small, but the benefit of the pre-trial calls in this county is evidenced in a greater number of settlements which are reported after the cases have passed from the pre-trial list to the short list, than was the case when we had no pre-trial call, and ran the jury list from a short list.

CHARLES M. CALHOUN,
Clerk,

ADVANCED CASES

The time between entry and trial has been substantially reduced, in the counties where the delay was greatest, Essex, Middlesex, Norfolk, Suffolk and Worcester Counties.

In considering the time between entry and trial the fact that many cases are advanced for trial under the statutes* should be kept in mind. During the year ending June 30 1938, 562 such advanced cases were tried in the State, 241 being in Suffolk County and, during the year ending June 30, 1939, 616 such cases were advanced, 307 being in Suffolk County; see tabluation on page 60.

In October and November, 1936, owing to the demolition of the north wing of the old court house in Suffolk County, several court rooms were vacated and the court functioned under a severe handicap with a reduced number of rooms suitable for jury sessions.

In February, 1939, four rooms in the new court house were made available and in April, 1939, all sixteen court rooms in the new court house were in use and additional jury sessions have been held, nine such sessions being scheduled for January, 1940. During 1936, 1937 and 1938, additional sessions were held in other counties where the need was greatest. As rooms were available in the new building the court was required to vacate certain rooms in the old building.

*G. L. (Ter. Ed.) Ch. 79, § 34 and Ch. 231, §§ 59–59A–60A, 103.

SUPERIOR COURT
MOTOR VEHICLE TORT CASES REFERRED TO AUDITORS
JANUARY 1—DECEMBER 31, 1938

(Prepared from the Clerks' Returns to the Chief Justice)

COUNTY	Motions Allowed	Settled Before Rule	Cases Wherein Rule Issued	Settled After Rule; No Report	Cases Wherein Report Filed	Settled After Report	Disc. or N. S. After Mo. All'd	Disposed of on Mo. for Judgt.	Insistence on Jury Trial: By Plff. Only	By Deft. Only	By Both Parties	Tried After Report: Jury	W. J.	Outstanding. Before Aud's Dec. 31, 1938	Pending Dec. 31, 1938 After Reports	Total Cases Disposed of After Mo. for Auditor All'd	Order of Reference Revoked	Auditors Fees
Barnstable	2	2	—	—	1	—	—	—	—	1	—	—	—	1	1	—	—	$65.00
Berkshire	17	—	17	2	9	9	—	1	1	1	—	—	—	5	—	11	1	390.00
Bristol	88	1	87	16	46	3	—	—	—	13	3	1	—	17	9	59	—	2,945.25
Dukes	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Essex	1,120*a*	330	539	—	488	282*b*	10	56*c*	36	24	140	6	17	51	157	712	11	10,348.05
Franklin	2	—	2	—	2	—	—	—	—	—	2	—	—	—	2	—	—	—
Hampden	1,035	67	931	228	500	300	1	23	80	47	160	68	3	210	166	528	—	15,516.35
Hampshire	—*f*	—	82	5	76	44	2	3	11	12	25	—	6	1	8	73	—	1,285.00
Middlesex	2,038	808	1,012	4	991	716	25	76	159	62	222	148	23	51	358	1,800	—	25,536.45
Nantucket	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Norfolk	45	—	45	2	35	21	—	5	2	—	9	2	—	3	4	31	7	455.75
Plymouth	92	—	92	5	55	33	—	—	11	2	6	—	—	26	12	52	—	1,454.17
Suffolk	3,152*d*	599	2,298	55	2,083	1,345*e*	24	51	203	65	607	44	9	166	612	2,130	2	54,109.23
Worcester	1,250	255	646	24	508	266	7	29	85	25	135	15	—	102	200	603	—	18,894.78
Totals	8,841	2,062	5,751	341	4,794	3,019	71	244	588	252	1,309	284	58	633	1,529	5,999	21	$131,000.03*

a Covers period January 11, 1938 to January 10, 1939, inc.
b Includes 143 cases settled during trial before auditor.
c Includes 16 cases disposed of under Rule 87 and 6 under G. L. ch. 211, §58.
d Includes 220 motions allowed in 1938 but referred in 1939.
e Includes 80 cases settled before report filed.
f Cases referred without motions.
g Billed to Hampden County.
h Reports under this item received only from counties specified.

* These amounts are included in expenditures for Auditors, Masters and Referees shown on page 59

REFERENCES TO AUDITORS AND MASTERS IN THE SUPERIOR COURT

REFERENCES TO AUDITORS AND MASTERS IN THE SUPERIOR COURT

County	1934		1935		1936		1937			1938		
	Auditor	Master	Auditor	Master	Auditor	Master	Auditors in Motor Vehicle Tort Cases	Other Auditors	Master	Auditors in Motor Vehicle Tort Cases	Other Auditors	Master
Barnstable	12	8	8	8	7	5	3	6	8	10	18	7
Berkshire	8	3	37	6	31	13	11	14	13	—	3	6
Bristol	7	35	36	38	11	34	14	7	39	47	14	35
Essex	20	48	133	36	461	46	223	118	42	268	178	52
Franklin	1	9	5	11	3	5	—	1	3	—	2	10
Hampden	5	23	202	21	404	41	297	110	60	488	92	44
Hampshire	12	8	48	9	35	13	41	14	2	25	9	9
Middlesex	12	71	209	57	581	96	467	310	99	507	66	64
Norfolk	16	13	292	12	218	25	293	32	16	18	15	20
Plymouth	7	10	223	21	65	27	60	—	18	52	13	22
Suffolk	22	96	703	158	1,773	281	2,521	10	136	1,335	96	156
Worcester	14	36	393	43	482	29	287	106	49	287	202	40
	136	360	2,289	420	4,071	615	4,217	165	485	3,037	708	465
								893				

Note: Since 1935 many motor vehicle tort cases were referred and frequently several cases were referred to be heard together by the same auditor. In the 1937 and 1938 columns 2 or more cases tried together are listed as one reference.

AUDITORS, MASTERS AND REFEREES AMOUNTS EXPENDED 1928–1938 BY COUNTIES

County	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
Barnstable	$692.90	$2,316.03	$569.27	$1,491.25	$2,973.01	$2,128.65	$2,861.01	$1,835.68	$1,437.65	$2,546.78
Berkshire	5,864.27	2,796.39	2,987.08	6,173.25	2,355.59	1,789.04	2,193.01	4,600.00	3,580.71	2,216.25
Bristol	9,140.57	7,159.43	9,121.01	9,975.70	7,476.50	3,587.74	5,799.64	6,815.25	4,210.94	9,007.90
Dukes	321.27	90.00	103.75	—	—	—	55.00	—	42.81	20.00
Essex	16,316.63	10,413.48	9,031.47	35,547.62	21,259.22	5,718.87	13,347.90	19,731.48	26,299.30	24,713.43
Franklin	2,065.83	912.50	1,097.50	1,690.81	1,201.49	959.80	874.91	1,077.80	1,060.83	887.50
Hampden	12,887.65	19,649.79	15,996.92	21,294.31	19,045.76	8,392.10	12,999.27	25,093.47	21,505.21	34,422.90
Hampshire	471.99	2,434.92	1,659.17	3,065.00	3,648.51	1,403.99	4,040.44	2,762.50	3,707.50	2,775.25
Middlesex	21,666.94	28,074.70	26,806.58	50,717.47	39,164.50	16,679.82	21,389.57	38,254.38	57,519.95	46,211.67
Nantucket	—	530.00	100.00	265.00	453.12	51.00	143.50	—	—	—
Norfolk	10,308.72	6,979.17	11,336.55	17,839.56	13,625.44	7,249.98	10,173.31	20,155.41	20,342.75	11,470.83
Plymouth	6,672.63	7,100.40	8,635.59	9,645.82	8,832.48	3,809.20	10,285.48	9,629.57	7,583.12	6,640.64
Suffolk	68,598.79	73,730.92	85,501.17	116,377.42	74,324.36	37,713.81	51,566.70	89,626.92	88,354.31	105,288.09
Worcester	6,827.78	8,164.13	8,977.14	34,233.25	21,702.05	12,176.94	32,579.18	39,196.82	41,350.44	44,658.71
	$161,385.97	$170,351.86	$182,014.20	$308,316.46	$216,062.03	$101,660.94	$168,308.92	$258,779.82	$276,995.52	$290,889.05*

Note: In Suffolk County these figures apply to the Superior Court (civil) only. In other counties to all courts, but the major portion applies to the Superior Court. While the expenditures under the heading "Auditors, Masters and Referees" are not segregated in the County Treasurer's reports, the major portion of the above amount is chargeable to the Superior Court.
Since 1935 auditors were used in many tort cases.

* The Auditor's fees in Motor Vehicle Tort Cases, shown on page 58, are included in these amounts.

JURY CASES ADVANCED FOR TRIAL AND TRIED DURING YEARS ENDING JUNE 30, 1938 AND JUNE 30, 1939

	Original Entries		Removed Cases		Total Advanced Cases Tried	
	1938	1939	1938	1939	1938	1939
Barnstable	1	1	3	..	4	1
Berkshire	2	..	3	..	5	..
Bristol:						
Taunton	..	..	..	1	..	1
New Bedford	..	1	..	1	..	2
Fall River	..	..	..	1	..	1
Essex:						
Salem	20	5	10	13	30	18
Lawrence	1	..	..	1	1	1
Newburyport	..	..	1	..	1	..
Franklin	..	..	..	1	..	1
Hampden	7	17	44	30	51	47
Hampshire	4	1	..	..	4	1
Middlesex:						
Cambridge	26	25	52	87	78	112
Lowell	3	..	..	..	3	..
Norfolk	4	5	27	47	31	52
Plymouth:						
Plymouth	..	1	9	5	9	6
Brockton	..	7	47	2	47	9
Suffolk	80	72	161	235	241	307
Worcester:						
Worcester	20	12	2	45	22	57
Fitchburg	..	..	35	..	35	..
Total	168	147	394	469	562	616

IN 1937–1938

In Suffolk 44 of the original cases tried and 137 of the removed cases tried were entered since June 30, 1935.

In Suffolk 767 jury cases were tried during year of which 241 or 31 per cent were advanced.

In the State 2,842 jury cases were tried during the year of which 562 or over 19 per cent were advanced.

IN 1938–1939

In Suffolk County 55 of the original cases tried and 198 of the removed cases tried were entered since June 30, 1936.

In Suffolk County 1,038 jury cases were tried during year of which 307 or 29 per cent were advanced

In the State 2,825 jury cases were tried during the year of which 616 or 21 per cent were advanced.

Other Facts Appearing from the Statistical Tables of the Civil Civil Business of Superior Court

The returns of the clerks of court as tabulated, and particularly tables numbered 2, 3, 4 and 5 relating to civil business, are interesting as they break down the number of trials, verdicts and findings in different classes of cases and also show the amount of verdicts and findings. Tables 4 and 5, as to verdicts and findings, produce figures which it is interesting to compare with the figures collected for the

SUPERIOR COURT CIVIL CASES, 1924–1939

Year Ending	Cases Entered — Suffolk County			Total Entered — In State			Number Tried during the Year — In Suffolk County				In State			
	Law	Equity	Divorce	Law	Equity	Divorce	Jury	Jury Waived	Equity	Divorce	Jury	Jury Waived	Equity	Divorce
June 30, 1924	9,923	1,809	565	21,964	3,230	1,412	1,569	274	292	589	2,594	563	475	1,571
June 30, 1925	10,034	1,615	306	23,090	3,009	906	1,695	209	391	274	3,022	514	562	707
June 30, 1926	10,793	1,886	143	23,223	3,316	—	1,074	337	445	—	2,735	668	683	—
June 30, 1927	11,863	2,135	104	24,516	3,655	554	1,149	380	342	89	2,857	696	601	452
June 30, 1928	16,270	1,920	40	32,551	3,392	469	1,053	350	404	43	2,672	669	679	402
June 30, 1929	16,562	2,011	27	33,165	3,502	365	1,089	243	378	26	2,517	490	536	285
June 30, 1930	17,584	2,133	11	35,190	3,642	196	1,069	325	441	16	2,684	617	632	271
June 30, 1931	18,370	2,120	17	36,190	3,604	111	1,063	362	312	7	2,533	808	510	122
June 30, 1932	16,209	1,846	6	34,464	3,411	81	966	335	398	10	2,505	725	605	92
June 30, 1933	12,210	1,883	2	25,587	3,536	67	787	695	400	2	2,080	1,319	606	63
June 30, 1934	10,412	1,630	1	25,446	3,251	90	849	469	415	2	2,131	1,022	586	65
June 30, 1935	8,991	1,546	—	22,075	2,881	66	741	425	388	—	2,360	817	655	62
June 30, 1936	8,127	1,398	1	21,072	2,685	24	868	542	284	—	2,595	1,110	554	32
June 30, 1937	9,650	1,378	1	24,181	2,672	15	1,140	440	379	3	2,880	757	526	17
June 30, 1938	10,872	1,377	1	27,629	2,678	10	767	358	455	0	2,842	721	629	7
June 30, 1939	10,482	1,319	0	26,195	2,537	4	1,037	362	314	0	2,824	503	444	7

The above table shows merely entries and trials. The tables on pp. 73–83 show more completely the functioning of the court in the disposition of its business.

SUPERIOR COURT CRIMINAL CASES, 1928–1939

For Year Ending	Number of Indictments Returned	Number of Cases in Which Indictments Were Waived	Number of Appealed Cases Entered	Number of Cases Tried	Number of Actions on Bail Bonds or Recognizances Entered
June 30, 1928	4,005	—	10,455	2,192	287
June 30, 1929	4,054	—	11,926	2,553	218
June 30, 1930	4,532	—	9,559	2,521	191
June 30, 1931	5,525	—	9,901	3,308	121
June 30, 1932	6,519	—	10,421	3,371	206
June 30, 1933	6,090	—	9,324	3,427	77
June 30, 1934	5,203	—	10,742	3,537	128
June 30, 1935	5,217	—	9,924	3,279	205
June 30, 1936	4,420	—	7,846	2,777	72
June 30, 1937	4,243	385	7,124	2,510	55
June 30, 1938	4,121	499	7,163	2,502	13
June 30, 1939	4,074	583	7,233	2,674	10

years 1928 and 1929, a tabulation of which will be found in the 5th Report of the Council in summary form on pp. 10 and 11.

The following summaries show the totals based on tables 4 and 5 (see pp. 76–77). There does not seem to be a very marked change in the proportionate number of different classes of cases. In a total of 2,257 verdicts for the plaintiff or for the defendant, in the year ending June 30, 1939, 1,108 were for the plaintiff and 1,149 for the defendant, which, so far as the figures go, indicates that the chance of recovery from a jury which was almost exactly a 50% chance last year was a little less this year. But the chances of settlement are suggested by the fact that there were 568 more jury trials than verdicts.

For the Year Ending June 30, 1939

Jury Trials—Verdicts for Plaintiff

	Contract	Motor Torts	Other Torts	Total
Verdicts of less than $200	15	123	42	180
$200 to $500	24	174	78	276
$500 to $1,000	25	116	66	207
Over $1,000	48	183	114	445
Totals	112	696	300	1,108

Verdicts for Defendant

	Verdicts Ordered for Defendant	Verdicts for Defendant Not Ordered	Totals
Contract	33	68	101
Motor Torts	124	526	650
Other Torts	164	234	398
Total	321	828	1,149

Total verdicts for ptf. or def. 2,257, i.e., 1,108 for ptf., 1,149 for def.

Findings in Jury-Waived Cases

Findings for Plaintiff

	Contract	Motor Torts	Other Torts	Total
Verdicts of less than $200	29	37	34	100
$200 to $500	28	26	15	69
$500 to $1,000	11	11	11	33
Over $1,000	33	17	18	68
Totals	000	000	000	270

Findings for Defendant

	Contract	Motor Torts	Other Torts	Total
	93	60	99	252
Total findings for plaintiff or defendant				522

LAND COURT FIGURES FOR 1938

Registration Cases	349
Confirmation Cases	3
Post Registration Cases	605
Tax Lien Cases	2,327
Miscellaneous Cases	88
Equity Cases	38
Total cases entered	3,410
Decree Plans Made	395
Subdivision Plans Made	446
Total Plans Made	841
Total Appropriation	$110,142.51
Fees sent State Treasurer	47,099.81
Income from Assurance Fund Applicable to Expenses	11,508.01
Unexpended Balance	4,307.52
Net Cost to Commonwealth	47,227.15
Assurance Fund, November 30, 1938	260,092.23
Assessed Value of Land on Petitions for Registration and Confirmation	3,388,749.00

CASES DISPOSED OF BY FINAL ORDER, DECREE OR JUDGMENT AFTER HEARING

Land Registration	367
Land Registration (Supplementary)	479
Tax Foreclosure	1,867
Equity, Real Actions and Miscellaneous	126
Total	2,839

PROBATE COURTS

St. 1934, chap. 330 provided that the Administrative Committee of the Probate Courts "shall from time to time establish forms for annual reports of the work of the several probate courts and registries of probate; and the several registries of probate shall annually, on or before March first, prepare and file with the committee uniform reports of the work of said courts and registries during the preceding fiscal year."

These reports have been tabulated by the Administrative Committee and sent to the Judicial Council for publication. They appear on the following page.

REPORTS OF REGISTERS OF PROBATE FOR YEAR ENDING DEC. 31, 1938

(Table prepared by the Administrative Committee of the Probate Courts)

County	Probate—Decrees													Divorces			Fees Collected				
	Original Entries (New Cases)	Administrations Allowed	Wills Allowed	Guardians Appointed	Conservators Appointed	Trustees Appointed	Accounts Allowed	Real Estate Sales	Real Estate Mortgages	Real Estate Partitions	Equity Decrees	Separate Support	Desertion and Living Apart	Custody	Other Decrees and Orders Entered	Papers Recorded	Original Entries (New Cases)	Decrees and Orders Entered: Nisi	Decrees and Orders Entered: Others	Probate	Divorce	Certificates and Copies	Total	Commitment, Insane Feeble Minded
Barnstable	415	141	155	32	5	15	388	63	9	5	9	4	1	0	217	1,962	79	65	6	$2,851.25	$400.00	$1,059.25	$4,310.50	0
Berkshire	861	331	275	103	32	53	842	77	9	1	19	17	9	3	499	3,014	171	155	304	5,221.60	890.00	2,134.00	8,245.00	6
Bristol	1,620	667	552	137	38	65	689	232	16	11	34	35	8	4	237	6,073	401	289	144	8,892.00	2,005.00	4,112.41	14,959.41	1
Dukes	101	29	38	10	5	7	95	11	1	2	4	1	1	1	27	430	7	5	3	785.00	35.00	370.70	1,090.70	—
Essex	2,838	1,313	821	281	80	161	3,244	370	34	50	57	70	2	21	1,140	12,091	593	471	359	17,302.00	2,945.00	7,057.65	27,312.65	—
Franklin	367	147	136	33	6	24	387	39	1	4	3	2	0	0	187	389	45	37	8	2,502.50	2,200.00	4,107.80	15,810.30	7
Hampden	1,490	526	483	133	57	86	1,460	112	5	3	87	43	3	9	768	9,109	459	378	170	9,892.50	2,535.00	4,018.85	15,810.30	7
Hampshire	2,079	164	149	36	14	23	494	74	4	1	2	2	1	2	192	2,465	67	44	12	2,851.00	5,830.00	16,402.45	55,286.45	17
Middlesex	5,488	2,291	1,768	653	144	386	3,237	582	130	13	117	110	16	47	4,188	27,121	1,170	871	963	33,153.00	10.00	5,555.05	218.05	0
Nantucket	41	12	15	0	2	0	10	2	0	0	0	1	0	0	0	5	101	4	2	15,685.00	1,990.00	7,780.34	25,459.34	20
Norfolk	2,183	840	671	211	42	177	2,820	216	50	12	67	47	4	10	1,303	9,296	398	326	292	15,058.00	925.00	2,417.20	10,400.20	3
Plymouth	2,161	512	398	104	27	51	1,124	154	33	3	26	6	3	1	1,158	5,537	185	110	43	7,698.00	7,150.00	13,402.15	53,451.15	1,272
Suffolk	5,060	2,380	1,088	603	107	331	5,526	231	70	21	123	72	22	8	5,889	26,901	1,441	1,092	935	32,595.00	7,150.00	4,878.75	23,433.80	23
Worcester	2,825	1,149	783	336	94	134	1,566	367	65	11	45	78	5	7	423	5,975	602	455	781	15,555.05	3,000.00			

THE MUNICIPAL COURT OF THE CITY OF BOSTON

This court consists of a chief justice and eight associate justices, all full time judges. There are also six special justices. The tables showing the details of the civil business for the year 1938 and the first nine months of 1939 will be found on p. 84. The comparative table of civil business from 1913 to 1939, the criminal business and other information for the year 1938, is as follows:

MUNICIPAL COURT OF THE CITY OF BOSTON
CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES)

YEAR	Entered	Removed	Per Cent	All Defaults	Per Cent of Entries	Tried	Per Cent of Entries	Total Plaintiffs' Judgments	Average Plaintiffs' Judgment Contract only	Heard, Appellate Division	Per Cent of Trials	To Supreme Judicial Court
1913	14,005	441	2.1	7,067	50	1,735	12	$1,008,147.00	$115.10	74	4.2	11
1914	15,173	501	3.3	7,681	50	1,676	11	976,320.00	103.45	88	5.2	18
1915	16,077	401	2.4	7,848	49	1,587	10	——	——	——	——	0
1916	16,095	401	2.4	7,707	47	1,760	11	1,117,059.00	104.69	93	5.8	19
1917	15,552	424	2.7	7,189	46	1,745	11	1,203,926.00	126.58	88	5.0	10
1918	12,786	380	2.9	6,381	49	1,290	10	1,043,886.00	120.32	84	6.5	6
1919	12,204	408	3.3	5,511	45	1,554	12	925,275.00	157.46	76	4.8	24
1920	13,702	477	3.4	6,078	44	1,745	12	1,065,379.00	132.97	94	5.4	18
1921	18,640	677	3.6	7,302	39	2,203	11	1,563,293.00	146.82	93	4.2	15
1922	19,948	476	2.386	10,106	50	2,201	11	1,877,970.00	154.10	106	4.8	10
1923	21,805	746	3.4	10,589	48	2,397	11	2,019,262.00	158.49	77	3.2	20
1924	23,820	907	3.8	11,239	47	2,636	11	2,256,391.00	149.86	79	3.0	14
1925	26,482	1,263	4.8	13,149	49	2,661	10	2,529,877.00	156.28	103	3.8	18
1926	30,830	1,505	4⅞	15,184	49	2,928	9	2,980,009.00	163.74	92	3.1	22
1927	36,025	1,303	3.6	18,129	50	3,342	9.2	3,579,613.41	152.05	104	3.1	21
1928	37,441	1,039	2.7	19,181	51	3,740	9.9	3,146,170.07	148.13	141	3.7	14
1929	39,676	992	2.5	20,114	50	3,863	9.7	4,154,206.96	154.00	112	2.9	14
1930	39,557	1,251	3.2	17,235	43	4,131	10	5,035,129.23	181.61	118	2.8	9
1931	39,948	1,235	3.1	12,356	31	4,290	11	5,141,389.85	210.40	107	2.5	14
1932	38,103	1,199	3.1	12,155	31	4,160	11	4,935,040.65	212.92	143	3.4	16
1933	31,421	1,189	3.7†	10,463	33†	3,584	11†	4,514,361.80	242.56	132	3.†	30
1934	30,825	1,450	4.7	9,626	31	3,475	11	4,132,030.25	233.14	149	4.5†	13
1935	31,287	3,481	11.12	11,255	35.9	3,401	10.86	3,889,952.30	222.16	159	4.67	25
1936	28,157	4,093	14	8,255	29	3,076	10.9	3,288,448.23	222.26	143	4	23
1937	28,526	5,325	18†	10,365	36	2,643	9.3	3,254,312.33	221.83	90	3.4	15
1938	30,357	5,448	18	9,817	32	2,859	9 4	3,857,166.34	221.52	104	3.6	6
1939 9 Mos.	20,591	3,690	18	6,662	32	2,044	9.9	2,625,908.69	221.90	58	2.8	2

The jurisdictional limits in civil cases from 1866 to 1877 were $300; from 1877 to 1894, $1,000; from 1894 to 1922, $2,000; from 1922 to September 1, 1929, $5,000; since September 1, 1929, the jurisdiction has been unlimited in amount.

SUBDIVISION — CONTRACT AND TORT 1926–1939

YEAR	ENTERED		REMOVED				TRIED	
	Contract	Tort	Contract	Per Cent of Entries	Tort	Per Cent of Entries	Contract	Tort
1926	24,475	5,485	1,256	(5)	249	(4)	1,728	1,007
1927	28,346	6,812	1,099	(3)	203	(3)	1,927	1,255
1928	29,141	7,168	876	(3)	159	(2)	1,895	1,519
1929	31,110	7,130	779	(2)	181	(2)	2,096	1,515
1930	29,607	8,328	815	(3)	410	(5)	2,203	1,654
1931	28,930	9,917	719	(2)	480	(5)	2,030	1,990
1932	28,674	7,693	865	(3)	306	(4)	1,978	1,855
1933	22,875	6,882	699	(3)	462	(7)	1,740	1,544
1934	19,792	9,218	511	(2)	898	(10)	1,451	1,712
1935	17,911	11,643	508	2.83	2,937	25.22	1,269	1,850
1936	15,348	11,227	387	2.5	3,676	33	1,066	1,732
1937	15,728	11,291	334	2.1	4,962	44	1,017	1,358
1938	16,923	11,872	309	1.8	5,121	43	1,078	1,503
1939 9 Mos.	11,783	7,767	199	1.77	3,476	44	730	1,112

The percentage of tort removals, read with the figures of all removals for the other district courts and the entries in the superior court, raise a serious question as to the effectiveness of the "Fielding Act" in relieving the Superior Court.

In 1938 there were also 2663 supplementary process cases, an increase of 559 over last year, and 1434 small claims cases, an increase of 478, in this court (see 14th Rep. p. 85).

CRIMINAL STATISTICS, MUNICIPAL COURT OF THE CITY OF BOSTON, FOR THE YEAR BEGINNING OCTOBER 1, 1938 AND ENDING SEPTEMBER 30, 1939

Cases Begun	46,849	Released by Prob. Officer	13,517
Discharged, N. P. or Filed	9,249	Court Drunkenness	6,323
Pleas Guilty	35,789	General Cases	5,665
Pleas Not Guilty	3,624	Traffic Cases	20,927
Findings Not Guilty	1,074	Domestic Relations	417
Held for Grand Jury	570		
Appeals	1,511		46,849

AUTOMOBILE LAWS OCTOBER 1, 1938 TO SEPTEMBER 30, 1939

Automobile Violations	1,182
Automobile Appeals	82
Traffic Violations	19,846
Traffic Appeals	240
Cases Reported for Inquests	114
Inquests Held	2

PARKING LAW

(Chap. 90 Sec. 20A, Chap. 368 of 1934. Revised Chap. 176, Acts of 1935, Amended Chap. 201 of 1938)

Penalty: 1st Offence, Warning; 2nd Offence, $1.00, 3rd Offence, $2.00

Tags issued to Police	132,000
Tags returned by offenders to this office	124,128
Total amount of money paid in Parking office	$40,287.00

The variance between tags issued to the Police Department and the tags returned is not a true one as our year is the calendar year. The loss in tags amounts to less than one-half of one per cent.

BOSTON JUVENILE COURT

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston. It has one judge and two special justices.

Entries for the Year Ending September 30, 1939

Delinquent, 422; juvenile criminal, 2; wayward, 0; neglected, 87; adult criminal, 10; Total, 521. Active probationers, 247 as of September 30, 1939.

In connection with these figures, it should be remembered that in most cases the boy is placed on probation or otherwise kept under supervision by the court through the probation officer over

STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1938 TO OCTOBER 1, 1939
AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee of District Courts

DISTRICT COURT	Civil Writs Entered	Contract	Tort	Summary Process (Ejectment)	All Other Cases	Removals to S. C. (Total of all removals)	Total Motor Tort Cases entered	Total removals of such to Superior Court	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases (total)	Operating under influence of intoxicating liquor	Intoxicating Liquor Cases	Juvenile Cases under 17 years
Worcester, Central	6,288	2,426	2,733	1,096	33	1,246	2,377	1,138	28	2	843	2,491	12,390	203	4,123	5,656	225	11	618
Springfield	4,659	2,155	1,869	582	53	1,051	1,634	945	14	1	930	1,668	8,288	37	2,866	3,686	106	20	202
Middlesex, 1st Eastern	6,715	2,447	3,364	873	31	1,095	2,958	996	18	2	1,227	3,193	4,214	150	1,914	1,187	133	12	179
Roxbury	3,522	148	1,515	1,812	47	314	1,273	257	7	0	1,005	1,185	13,039	434	5,276	5,026	139	2	612
Bristol, Third	1,546	597	590	278	81	248	531	216	9	0	187	1,166	2,426	153	910	307	109	7	199
Middlesex, 3rd Eastern	5,628	2,251	2,493	854	30	784	2,169	732	24	2	1,195	1,586	7,142	250	3,611	2,149	243	29	75
Dorchester	2,840	246	1,769	811	14	463	1,452	400	9	0	1,415	1,443	5,205	315	2,314	1,591	67	19	259
Lowell	2,236	845	1,030	353	8	330	918	303	8	3	543	1,858	2,861	88	1,874	199	84	18	186
Bristol, Second	1,803	582	593	606	22	282	531	207	3	0	217	694	2,910	127	1,259	675	56	35	199
Essex, Southern	3,641	1,308	1,585	685	63	657	1,350	546	14	0	450	1,126	3,334	155	1,700	340	103	12	178
Lawrence	1,643	666	759	200	18	274	678	252	8	2	185	657	3,031	119	1,787	485	102	13	102
Norfolk, East	3,125	1,490	1,226	373	36	396	1,167	349	11	1	768	1,951	3,769	109	1,826	1,182	209	2	201
Somerville	2,526	1,104	826	561	35	293	500	200	5	0	551	809	2,680	87	1,154	273	56	0	106
West Roxbury	1,104	127	492	482	3	132	404	109	1	1	634	786	3,855	222	1,237	2,028	62	5	138
Essex, First	2,066	1,201	603	231	31	347	533	268	13	0	376	724	2,450	164	1,292	402	124	1	130
Brockton	1,630	649	687	237	57	204	357	169	14	1	184	503	2,460	91	1,366	357	98	13	113
East Boston	1,067	168	597	296	6	226	496	191	3	0	455	476	3,951	95	1,818	719	26	5	476
Chelsea	3,305	639	2,024	620	22	567	1,559	450	14	1	678	894	2,698	204	1,146	581	70	15	194
South Boston	573	48	277	247	1	112	235	107	0	0	191	170	7,510	116	4,560	1,795	43	5	186
Essex, North Central	982	418	432	129	3	131	367	117	4	3	130	576	1,278	60	641	191	45	7	15
Holyoke	689	204	408	76	1	220	346	184	2	1	56	470	1,107	6	609	100	32	4	38
Hampshire	500	191	211	90	8	114	206	110	0	0	85	467	1,489	44	529	451	86	2	35
Middlesex, 2nd Eastern	1,848	880	634	330	4	285	585	276	5	1	403	932	3,628	59	1,029	2,067	83	16	106
Berkshire, Central	747	403	206	134	4	106	192	97	5	0	102	930	2,154	7	693	917	62	3	30
Bristol, First	709	322	256	95	36	95	208	69	5	1	123	268	1,536	82	260	594	73	4	71
Middlesex, 4th Eastern	1,454	733	499	204	18	274	488	224	5	0	339	628	2,273	39	985	828	90	1	75
Newton	1,927	1,017	711	186	13	258	642	228	4	0	532	657	1,990	94	715	821	55	4	58
Fitchburg	721	346	269	95	11	147	258	146	0	0	140	201	1,568	56	1,103	280	50	8	55
Norfolk, Northern	1,296	668	495	126	7	218	475	210	5	0	315	547	1,374	63	488	490	74	5	62
Brighton	931	122	369	435	5	88	317	78	7	0	503	587	2,739	119	1,327	591	51	10	61
Franklin, Greenfield	302	170	100	29	3	60	95	57	5	0	51	455	1,016	9	226	246	56	4	37

East Boston	1,067	168	597	296	6	226	496	191	3	0	455	476	3,951	95	1,818	719	26	5	470
Chelsea	3,305	639	2,024	620	22	567	1,559	450	14	1	678	894	2,698	204	1,146	581	70	15	194
South Boston	573	48	277	247	1	112	235	107	0	0	191	170	7,510	116	4,560	1,795	43	5	186
Essex, North Central	982	418	432	129	3	131	367	117	4	3	130	576	1,278	60	641	191	45	7	15
Holyoke	689	204	408	76	1	220	346	184	2	1	56	470	1,107	6	609	100	32	4	38
Hampshire	500	191	211	90	8	114	206	110	0	0	85	467	1,489	44	529	451	86	2	35
Middlesex, 2nd Eastern	1,848	880	634	330	4	285	585	276	5	1	403	932	3,628	59	1,029	2,067	83	16	106
Berkshire, Central	747	403	206	134	4	106	192	97	5	0	102	930	2,154	7	693	917	62	3	30
Bristol, First	709	322	256	95	36	95	208	69	5	1	123	268	1,536	82	260	594	73	4	71
Middlesex, 4th Eastern	1,454	733	499	204	18	274	488	224	5	0	339	628	2,273	39	985	828	90	1	75
Newton	1,927	1,017	711	186	13	258	642	228	4	0	532	657	1,990	94	715	821	55	4	58
Fitchburg	721	346	269	95	11	147	258	146	0	0	140	201	1,568	56	1,103	280	50	8	55
Norfolk, Northern	1,296	668	495	126	7	218	475	210	5	0	315	547	1,374	63	488	490	74	5	62
Brighton	931	122	369	435	5	88	317	78	7	0	503	587	2,739	119	1,327	591	51	10	61
Franklin, Greenfield	302	170	100	29	3	60	95	57	5	0	51	455	1,016	9	326	346	58	4	37
Worcester, 1st Southern	375	130	107	51	87	68	97	68	0	0	51	471	1,800	24	460	795	55	0	33
Brookline	1,798	950	682	156	10	210	581	190	8	0	502	662	1,681	36	302	1,071	34	0	71
Bristol, Fourth	337	182	101	53	1	37	96	33	1	0	68	272	972	37	273	577	72	5	63
Plymouth, Second	665	349	218	92	6	108	211	97	2	0	173	461	1,509	34	755	389	90	4	40
Chicopee	421	182	151	83	5	109	130	88	1	0	77	203	712	14	392	123	33	10	51
Worcester, 1st Northern	454	214	148	91	1	109	143	102	0	0	104	442	1,486	61	756	366	70	4	49
Charlestown	293	25	169	98	1	70	141	57	1	1	112	132	4,024	250	2,218	1,339	26	1	157
Middlesex, 1st Southern	948	502	34	116	296	170	281	157	9	0	216	311	1,030	26	380	267	65	6	64
Essex, Eastern	567	340	159	48	20	74	135	60	1	0	77	144	958	23	564	99	19	0	28
Norfolk, Western	478	255	174	46	3	70	163	66	1	0	121	286	888	27	243	358	69	0	71
Middlesex, Central	556	320	183	53	0	94	169	89	2	0	155	398	903	49	284	342	63	0	36
Worcester, 2nd Eastern	220	69	121	29	1	65	121	65	0	0	53	247	399	4	56	172	17	3	11
Hampden, Western	234	81	98	52	3	61	95	58	2	0	34	229	1,331	20	275	762	69	2	23
Berkshire, Northern	252	92	106	54	0	49	101	45	1	0	57	312	753	12	459	350	22	4	24
Marlborough	428	176	208	41	3	119	191	117	1	0	70	288	493	9	153	82	25	8	7
Worcester, 2nd Eastern	231	119	79	29	4	33	71	30	0	0	31	85	473	14	113	159	30	3	19
Newburyport	278	114	135	27	2	62	127	54	4	1	58	197	1,095	45	505	359	45	2	25
Plymouth, Third	216	122	53	39	2	29	50	25	2	0	49	140	691	27	255	259	64	0	38
Peabody	622	236	312	58	16	143	263	128	0	0	82	166	739	29	528	94	28	6	28
Leominster	434	222	144	68	0	104	144	102	1	0	71	45	759	13	516	97	34	3	42
Worcester, Western	111	64	5	20	22	5	21	5	0	0	26	170	364	15	109	68	15	0	20
Worcester, 3rd Southern	308	151	134	19	4	61	131	61	0	0	87	178	254	6	48	56	7	0	24
Hampden, Eastern	95	35	33	11	16	27	32	25	0	0	15	149	1,013	17	227	584	63	7	22
Plymouth, Fourth	224	134	57	28	5	23	50	17	1	0	64	351	1,095	32	331	764	68	12	58
Norfolk, Southern	304	130	127	45	2	87	118	86	0	0	67	155	644	20	141	223	27	1	36
Middlesex, 1st Northern	190	106	64	17	3	22	63	22	1	0	33	86	1,099	38	279	260	66	3	15
Worcester, 1st Eastern	141	56	75	10	0	27	75	26	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Worcester, 3rd Southern	308	151	134	19	4	61	131	61	0	0	87	178	254	6	48	56	7	0	24
Hampden, Eastern	95	35	33	11	16	27	32	25	0	0	15	149	1,013	17	227	584	63	7	22
Plymouth, Fourth	224	134	57	28	5	23	50	17	1	0	64	351	1,095	32	331	764	68	12	58
Norfolk, Southern	304	130	127	45	2	87	118	86	0	0	67	155	644	20	141	223	27	1	36
Middlesex, 1st Northern	190	106	64	17	3	22	63	22	1	0	33	86	1,099	38	279	260	66	3	15
Worcester, 1st Eastern	141	56	75	10	0	27	75	26	0	0	18	94	485	8	80	259	27	0	13
Berkshire, Fourth	127	57	56	13	1	33	48	33	1	0	26	141	484	0	111	172	21	4	10
Essex, Second	168	85	63	20	0	23	51	18	0	0	33	135	502	30	294	115	25	1	28
Barnstable, First	343	228	86	28	1	58	84	49	3	0	74	232	828	89	248	134	105	5	32
Barnstable, Second	185	132	34	18	1	30	28	18	0	0	49	215	492	17	143	130	48	1	29
Berkshire, Southern	141	102	31	7	1	4	27	11	0	0	8	269	385	8	114	152	33	0	4
Natick	321	142	121	53	5	51	121	51	1	0	63	179	1,048	23	277	614	24	0	41
Lee	56	34	14	8	0	1	14	1	0	0	11	151	448	1	103	173	23	0	30
Hampshire, Eastern	80	39	31	10	0	16	31	16	0	0	9	118	356	3	114	162	5	0	6
Franklin, Eastern	80	46	21	13	0	14	21	14	0	0	7	73	165	1	22	52	7	2	5
Essex, Third	76	36	26	7	7	28	26	13	0	0	20	25	313	10	164	78	39	0	3
Winchendon	81	41	19	12	9	16	19	16	0	0	9	48	494	17	240	144	41	0	8
Dukes County	61	49	4	7	1	1	4	1	0	0	44	135	186	14	44	55	12	0	15
Williamstown	25	15	9	0	1	5	9	5	0	0	2	104	165	2	33	49	5	0	1
Nantucket	51	35	2	14	0	1	1	1	0	0	13	95	56	5	14	18	4	0	0
Total	80,998	30,968	34,016	14,770	1244	13,334	29,585	11,751	294	24	17,652	38,557	149,937	4,867	63,361	48,568	4,409	389	6,270

ADDITIONAL INFORMATION—Total Motor tort cases removed.....11,751
Removed by plaintiff.....6,230
Removed by defendant.....5,470
Removed by both..... 51

Neglected Children Total.....1,128
Inquests Total..... 97

a long probation period, and that in addition to the "cases" of new complaints entered on the docket and reported in the annual returns to the Department of Correction, the advice and assistance of the judge and probation officers is constantly sought by parents in informal conferences in cases which do not reach the stage of formal complaint by any one.

THE OTHER DISTRICT COURTS

In addition to the Municipal Court of the City of Boston there are seventy-two other district courts in different parts of the Commonwealth. Each has one standing justice and from one to three special justices, the number varying with different courts—a total of 72 justices and about 150 special justices.

The statistical table showing the business of all these 72 courts, prepared by the Administrative Committee of the District Courts, is inserted opposite this page.

The five-year comparative table of the work of these courts will be found on page 17 of this report.

As compared with the figures in the 14th Report, page 17, the business is about the same, except that there is an increase of about 8,400 small claims cases over last year, when there was an increase of about 6,300 over the previous year, making an increase of about 14,700 in 2 years, and a 1939 total (outside of the Boston Municipal Court) of 38,557 as compared with 22,656 in 1933–1934 and 23,533 in 1936–1937. The "small claims" procedure applies to cases not exceeding $50.

There were about 1,300 fewer removals of motor tort cases and about 1,200 fewer removals of all kinds of cases as compared with last year.

There were about 400 more criminal cases and about 500 fewer criminal appeals.

A picture of each of the seventy-two courts with the business load and cost of each in 1932 will be found in the tenth Report of the Judicial Council, Appendix A.

Trial Justices

For figures as to their business, see page 68.

THE DEPARTMENT OF INDUSTRIAL ACCIDENTS

Of the 112,728 accident reports filed with the department during the year 1938, 33,460 were for injuries causing the loss of at least one day or one shift, called in the report of the department "tabulatable injuries." Of this latter number 2,489 were not insured, and how many of them ripened into lawsuits we do not know.

COMPARATIVE TABLE

CRIMINAL CASES BEFORE TRIAL JUSTICES

FOR THE YEARS ENDING SEPTEMBER 30, 1938 AND SEPTEMBER 30, 1939

Trial Justices at	Criminal Cases Begun		Criminal Appeals		Drunkenness		Automobile Cases		Operating Under Influence		Inquests		Juveniles Under 17 Years		Neglected Children	
	1938	1939	1938	1939	1938	1939	1938	1939	1938	1939	1938	1939	1938	1939	1938	1939
Andover	48	11	0	0	2	0	46	7	0	0	0	0	0	0	NOT REPORTED	0
North Andover	46	27	0	1	23	12	30	16	5	5	2	4	0	0		0
Barre*	46	133	6	52	11	12	10	14	1	4	0	0	1	2		0
Hardwick	107	94	1	0	20	11	56	53	2	2	0	0	1	4		1
Hopkinton	8	15	0	3	5	10	0	0	0	0	0	0	0	0		0
Hudson	117	91	3	0	51	53	1	5	0	0	0	0	0	5		0
Ludlow	199	281	1	4	70	54	0	71	0	0	1	0	9	0		8
Marblehead	240	196	1	2	167	141	49	20	10	15	0	0	0	0		0
Nahant	143	163	0	1	11	16	61	91	4	5	0	0	0	0		0
Saugus	335	348	3	3	191	139	133	103	0	0	0	0	8	13		0
Totals	1,289	1,359	15	66	551	448	386	380	22	31	3	4	19	24		9

* The marked increase in the number of cases in Barre in 1939, as compared with 1938, is explained by the fact that there was a long continued strike in this jurisdiction during the summer of 1939.

Neither can we know how many of the remaining 30,971 cases would in fact have gone before our courts if they had not been adjusted before the Industrial Accident Board for the reason that the basis of determination of cases under the Workmen's Compensation Act is causal relation of the injury to the employment, wheeras the basis of determination of master and servant cases by the Courts prior to the Workmen's Compensation Act was upon the principle of negligence. Of these 33,460 cases 207 resulted in death, 16 in permanent total disability, 965 in permanent partial disability, and that 66.4 per cent of the remainder represent a temporary disability of more than a week. The Board is not a court, but an administrative commission. It was in part created to relieve our courts of the congestion of cases growing out of the relation of master and servant. In addition to its administrative duties, the Board, and its members, hold several thousands of hearings each year to determine questions of fact and law arising under the Workmen's Compensation Act.

There was paid by the various authorized insurance companies operating under this act the sum of $6,588,699.21 during the year 1938 at a gross cost of $334,247.10. As there were receipts of $20,306.35 to be credited, the net cost to the Commonwealth was $313,940.75, about $100,000 more than in any previous year as shown by the following table.

DEPARTMENT OF INDUSTRIAL ACCIDENTS

1927–1938

	Accident Reports Filed	"Tabulated Injuries"	Not Insured	Resulting in Death	Permanent Total Disability	Permanent Partial Disability	Temporary Disability
1927	168,057	64,167	5,221	317	17	1,232	60.5 of remainder
1928	158,990	60,330	3,989	340	12	1,197	62.4 " "
1929	160,183	60,195	2,967	353	4	1,352	61.9 " "
1930	170,663	61,741	2,658	344	7	1,179	64.3 " "
1931	144,133	50,006	2,018	282	5	1,031	65 " "
1932	123,517	42,067	1,553	222	7	864	66.7 " "
1933	94,144	31,769	1,207	162	8	602	67.5 " "
1934	109,394	35,217	1,347	231	9	853	66.5 " "
1935	107,042	32,973	1,468	242	12	890	66.4 " "
1936	118,648	34,323	1,862	224	11	925	68.8 " "
1937	133,086	38,430	2,391	232	12	1,047	64.4 " "
1938	112,728	33,460	2,489	207	16	965	66.4 " "

	Medical Expenses and Compensation Paid by Companies	Gross Cost to Commonwealth	Receipts	Net Cost to Commonwealth
1927	$8,018,634.38	$194,550	$17,330.79	$177,219.21
1928	8,976,147.18	228,694.59	19,937.30	208,757.29
1929	9,461,962.31	207,165.78	25,518.50	181,647.28
1930	9,861,383.09	214,907.16	26,819.42	188,087.74
1931	8,978,058.04	229,586.89	33,740.28	195,846.61
1932	7,820,043.54	219,557.79	29,026.25	190,531.54
1933	5,856,868.43	202,023.48	23,508.11	178,515.37
1934	6,159,612.31	194,937.16	16,875.47	178,061.69
1935	6,397,752.72	216,829.53	19,414.26	197,415.27
1936	7,115,547.44	216,464.19	18,010.21	198,453.98
1937	7,502,571.35	234,294.61	22,055.08	212,239.53
1938	6,588,699.21	334,247.10	20,306.35	313,940.75

APPELLATE TAX BOARD

The Appellate Tax Board is an administrative tribunal, to which have been transferred some of the functions formerly imposed on the Superior Court. It came into existence under St. 1937, c. 400, on May 29, 1937, succeeding the old Board of Tax Appeals which was abolished.

SUMMARY OF REAL ESTATE TAX APPEALS

(Under the Board of Tax Appeals from Dec. 1, 1930 to May 28, 1937 and under the Appellate Tax Board May 29, 1937 to Nov. 30, 1939)

COMBINED FORMAL AND INFORMAL PROCEDURE

(The State, as a whole)	1931	1932	1933	1934	1935	1936	1937	1938	1939
Total appeals pending at beginning of year	0	145	834	2,396	3,248	4,233	6,078	7,746	9,702
Total appeals entered (net) during year	235	1,067	2,763	3,366	4,456	4,459	5,775	6,400	7,134
Total number before Board during year	235	1,212	3,597	5,762	7,704	8,692	11,853	14,146	16,836
Less: Settled or withdrawn during year	59	250	839	1,937	3,003	1,941	3,433	3,520	4,752
Net total to be decided by Board	176	962	2,758	3,825	4,701	6,751	8,420	10,626	12,084
Appeals decided by Board during year	31	128	362	577	468	673	674	924	1,213
Appeals pending at end of year	145	834	2,396	3,248	4,233	6,078	7,746	9,702	10,871

APPEALS FROM COMMISSIONER OF CORPORATIONS AND TAXATION

	1931	1932	1933	1934	1935	1936	1937	1938	1939
Pending at beginning of year	0	27	26	24	16	30	383	392	262
Entered during year	66	47	42	25	31	374	37	58	115
Total	66	74	68	49	47	404	420	450	377
Settled or withdrawn during year	9	14	17	15	8	14	12	161	202
Net	57	60	51	34	39	390	408	289	175
Decided	30	34	27	18	9	7	16	27	30
Pending at end of year	27	26	24	16	30	383	392	262	145

RESULTS OF ALL APPEALS TO SUPREME JUDICIAL COURT

	Sustained by S. J. C.	Reversed by S. J. C.
1931	1	0
1932	6	2
1933	2	1
1934	4	0
1935	5	0
1936	1	2
1937	3	3
1938	2	1
1939	3	2
Total	27	11

TABLES OF CASES DECIDED BY THE SUPREME JUDICIAL COURT, 1875–1939

COURT YEAR ENDING AUG. 31	Number of Cases Decided	Reported in the Following Volumes of Massachusetts Reports	COURT YEAR ENDING AUG. 31	Number of Cases Decided	Reported in the Following Volumes of Massachusetts Reports
1875	394	115–118	1907	441	192–196
1876	418	118–120	1908	397	196–199
1877	403	120–123	1909	413	199–203
1878	388	123–125	1910	356	203–206
1879	334	125–127	1911	390	206–209
1880	316	127–129	1912	388	209–212
1881	372	129–131	1913	427	212–215
1882	293	131–133	1914	472	215–218
1883	344	133–135	1915	432	218–221
1884	374	135–137	1916	433	221–224
1885	367	137–140	1917	417	224–228
1886	385	140–142	1918	391	228–231
1887	399	142–145	1919	340	231–233
1888	321	145–147	1920	341	233–236
1889	349	147–149	1921	378	236–239
1890	344	149–152	1922	356	239–242
1891	321	152–154	1923	397	242–246
1892	422	154–157	1924	422	246–249
1893	354	157–159	1925	419	249–253
1894	341	159–162	1926	483	253–257
1895	333	162–164	1927	515	257–261
1896	356	164–166	1928	467	261–264
1897	371	166–169	1929	496	264–267
1898	397	169–172	1930	487	268–271
1899	339	172–174	1931	459	271–276
1900	366	174–176	1932	427	276–280
1901	381	176–179	1933	404	280–283
1902	381	179–182	1934	423	283–287
1903	348	182–184	1935	493	287–291
1904	354	184–186	1936	414	291–295
1905	384	186–188	1937	349	296**–298
1906	484	188–192	1938	390	298–301
			1939	386*	301–303

*Of these five were advisory Opinions of the Justices and sixteen cases were decided in which rescripts were filed, but no opinions.

**Volume 296 is not yet published and the statement as to the location of the reports of the subsequent cases is approximate.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939

County	CRIMINAL CASES											
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases.	Number of actions on bail bonds for recognizances entered.	Number disposed of in previous years brought forward for redisposition.	Indictments waived.	Number disposed of during year.	Number remaining at end of year.	Number tried during year.	Number awaiting trial at end of year.	Number of days during which Court has sat for trials, hearings or dispositions.	Days District Court judges were called in to sit.
Barnstable	40	61	96	—	—	—	150	47	26	18	14½	9
Berkshire	56	71	33	—	—	8	106	62	13	54	17	—
Bristol	211	402	463	—	8	42	869	257	116	95	91	36
Dukes	14	27	10	—	—	—	19	32	5	32	17	—
Essex	52	378	732	4	37	111	1,269	45	203	37	138	68
Franklin	52	32	11	—	—	—	44	51	9	24	13**	—
Hampden	106	81	150	2	1	21	232	129	34	106	34	—
Hampshire	114	42	67	—	33	3	143	116	24	32	20	9
Middlesex	430	883	1,215	—	109	129	2,490	276	488	222	319	131
Nantucket	3	7	13	—	6	2	20	1	20	1	3	—
Norfolk	355	401	306	—	157	65	976	308*	121	291	98	52
Plymouth	131	290	245	1	128	10	627	178	104	11	54	34
Suffolk	563	1,043	3,496	—	358	2	4,925	537	1,372	457	810	271
Worcester	82	356	396	3	39	190***	1,011	59	139	47	150	68
Total	2,209	4,074	7,233	10	876	583	12,881	2,098	2,674	1,427	1,778½	678

* Including 226 secret indictments.
** One day Naturalization included.
*** Four complaints by District Attorney.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

*** Four complaints by District Attorney.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939

MADE BY THE CLERKS OF COURT TO THE JUDICIAL COUNCIL IN COMPLIANCE WITH STS. 1936, C. 3, § 3

COUNTY	CIVIL CASES											
	Table 1 — NUMBER UNDISPOSED OF AT BEGINNING OF YEAR, JULY 1, 1938											
	LAW											
	JURY CASES				NON-JURY				Equity	Divorce and Nullity	Total Jury Cases	Total Non-Jury
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	93	132	30	28	58	1	8	10	54	0	283	77
Berkshire	37	129	37	4	18	2	2	10	72	0	207	32
Bristol	370	930	374	11	140	17	74	7	420	0	1,685	238
Dukes	0	5	1	0	6	0	0	0	1	0	6	6
Essex	660	1,523	668	99	191	73	89	26	455	1	2,950	379
Franklin	35	83	17	8	11	5	1	16	59	0	143	33
Hampden	316	1,673	820	54	113	4	18	18	565	7	2,863	153
Hampshire	54	141	49	18	30	3	3	4	76	1	262	40
Middlesex	693	3,629	1,256	174	197	36	82	42	700	5	5,752	357
Nantucket	—	—	—	—	—	—	—	—	—	—	—	—
Norfolk	441	1,087	443	103	129	29	43	42	280	0	2,074	243
Plymouth	190	364	141	37	63	39	18	18	203	31	732	138
Suffolk	2,484	5,225	8,196	*	1,892	147	1,538	—*	4,243	2**	15,905	3,577
Worcester	461	2,210	807	80	173	328	109	37	211	2	3,558	647
Totals	5,834	17,131	12,839	616	3,021	684	1,985	230	7,339	49	36,421	5,920
Combined Totals	36,421				5,920							
	Total Undisposed of of all kinds—49,729											

* Included in Contracts for undisposed of ending June 30, 1938.

** Error of 1938 report.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

CIVIL CASES

Table 2 — NUMBER OF NEW CASES ENTERED DURING THE YEAR

COUNTY	ORIGINAL WRITS				REMOVALS FROM DISTRICT COURTS								Equity	Divorce and Nullity	All Others
					BY PLAINTIFF				BY DEFENDANT						
	Contract	Motor Torts	Other Torts	All Others	Contract	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others			
Barnstable	42	0	18	11	1	22	0	0	17	30	3	0	19	0	0
Berkshire	45	0	35	7	0	136	0	0	19	79	2	1	21	0	0
Bristol	76	1	101	10	0	157	0	0	88	384	46	4	119	0	0
Dukes	4	0	1	0	0	1	0	0	0	0	0	0	0	0	0
Essex	223	0	236	0	0	553	7	0	144	865	173	0	188	0	73
Franklin	12	0	10	10	0	48	1	0	6	17	0	0	15	0	1
Hampden	182	2	297	47	0	902	1	0	77	403	102	0	156	3	0
Hampshire	22	0	17	0	0	79	0	0	6	23	0	1	9	0	15
Middlesex	341	2	610	63	4	1,881	13	0	144	1,812	123	15	390	1	5
Nantucket	3	—	—	—	—	2	—	—	—	—	—	—	—	—	—
Norfolk	106	0	216	43	0	540*	0	0	53*	378*	31	0	88	—	1
Plymouth	63	0	32	0	0	160	0	0	33	178	9	0	58	0	18
Suffolk	1,016	19	1,870	104	7	4,369	415	4	349	1,854	330	37	1,319	0	108
Worcester	375	0	447	2	7	1,388	11	0	68	454	38	0	155	0	83
Totals	2,510	24	3,890	297	19	10,238	448	4	1,004	6,477	857	58	2,537	4	304
					10,709				8,496						
Combined Totals	6,721				19,175								2,537	4	304

Total entries of all kinds—28,741

* Including 30 cases removed by both plaintiff and defendant.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

County	CIVIL CASES											
	Table 3 — Number of Trials / Cases Tried											
			Jury				Non-Jury				Equity	Divorce and Nullity
	Total Jury Trials	Total Non-Jury Trials	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	15	2	2	9	3	1	1	0	1	0	3	0
Berkshire	34	6	3	20	9	2	3	0	3	0	6	0
Bristol	88	12	10	65	7	6	6	2	4	0	3	0
Dukes	2	0	0	2	0	0	0	0	0	0	0	0
Essex	283	70	53	162	58	10	31	15	12	12	25	0
Franklin	30	2	0	24	6	0	2	0	0	0	0	0
Hampden	235	24	16	146	66	7	9	11	4	0	20	6
Hampshire	35	5	5	20	9	1	1	3	0	1	0	0
Middlesex	474	57	28	314	120	12	13	20	19	5	27	0
Nantucket	1	—	—	—	—	1	—	—	—	—	—	—
Norfolk	166	9	14	112	36	4	2	3	4	0	5	0
Plymouth	80	9	6	56	15	3	2	3	2	2	22	1
Suffolk	1,037	362	102	491	437	7	109	90	125	38	314	0
Worcester	345	45	28	231	74	12	21	6	8	10	19	0
Totals	2,825	603	267	1,652	840	66	200	153	182	68	444	7

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

CIVIL CASES

Table 4 — NUMBER OF JURY VERDICTS

County	For Plaintiff																		For Defendant					
	Ordered			Not Ordered			Less than $200			$200 to $500			$500 to $1,000			Over $1,000			Ordered			Not Ordered		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	1	3	2	0	1	0	1	0	1	0	1	0	0	1	1	0	0	0	1	6	1
Berkshire	0	0	0	1	9	4	0	1	0	0	4	2	0	3	2	1	1	0	1	5	2	1	6	3
Bristol	1	15	4	3	0	0	0	2	1	1	1	1	0	2	2	0	10	0	1	11	0	4	9	0
Dukes	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	0	0	17	40	23	1	3	1	3	8	4	4	11	6	9	18	12	4	13	12	18	81	14
Franklin	0	1	0	0	0	0	0	3	0	0	7	0	0	2	0	0	6	0	0	0	0	0	5	5
Hampden	0	0	2	14	65	25	1	8	4	3	21	7	2	8	4	8	28	10	2	3	13	1	30	23
Hampshire	0	2	0	2	13	0	1	2	0	1	4	0	0	5	0	0	4	0	2	1	0	1	1	8
Middlesex	1	0	0	14	51	6	4	33	6	4	35	9	5	20	8	2	67	27	4	20	37	9	142	44
Nantucket	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Norfolk	1	0	1	3	67	9	1	15	3	1	14	2	2	12	1	0	26	4	4	1	14	6	44	12
Plymouth	3	1	0	2	29	10	2	5	2	1	7	1	2	5	2	0	13	5	0	6	3	1	12	2
Suffolk	3	1	3	29	146	124	3	34	24	8	54	42	9	40	38	21	66	46	11	43	69	20	137	98
Worcester	1	3	0	10	80	22	2	15	1	1	18	9	1	7	3	7	43	9	4	21	14	6	53	24
Totals	10	23	10	96	503	225	15	123	42	24	174	78	25	116	66	48	283	114	33	124	164	68	526	234

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

CIVIL CASES

Table 5 — Number of Non-Jury Findings

County	Findings for Plaintiff												Findings for Defendant		
	Less than $200			$200 to $500			$500 to $1,000			Over $1,000					
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Berkshire	0	0	0	0	0	0	1	0	0	0	0	1	2	0	2
Bristol	0	0	0	0	1	0	0	0	0	1	0	0	6	0	3
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	3	2	3	8	7	2	1	0	0	9	0	3	9	6	4
Franklin	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0
Hampden	1	1	1	1	0	0	0	3	0	2	4	1	5	3	2
Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	1	3	0
Middlesex	5	5	2	0	3	1	1	3	1	2	2	7	7	10	9
Nantucket	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Norfolk	1	1	2	0	2	0	0	0	1	0	0	0	0	0	0
Plymouth	0	1	1	1	0	0	0	0	1	1	2	0	0	2	1
Suffolk	17	26	23	16	12	11	7	4	7	16	7	5	46	35	75
Worcester	2	1	2	0	1	1	1	1	1	2	2	1	16	1	3
Totals	29	37	34	28	26	15	11	11	11	33	17	18	93	60	99

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

CIVIL CASES

Table 6

FINALLY DISPOSED OF

County	Jury								Non-Jury								Equity	Div. and Nul.
	On Auditor's Report				Otherwise				On Auditor's Report				Otherwise					
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	3	0	0	0	46	52	14	9	1	0	0	0	32	0	3	2	18	0
Berkshire	0	0	0	0	45	231	39	4	0	0	0	0	23	2	4	5	37	0
Bristol	1	1	1	0	91	519	102	8	0	0	0	0	52	8	6	22	122	0
Dukes	0	0	0	0	1	3	1	0	0	0	0	0	4	0	0	0	0	0
Essex	18	62	7	0	423	1,471	444	55	10	12	17	0	175	84	57	47	398	1
Franklin	0	0	0	0	12	83	13	4	0	0	0	0	5	0	0	1	21	0
Hampden	12	427	97	0	230	1,087	467	36	2	0	0	0	98	17	24	14	245	6
Hampshire	0	0	1	0	26	121	30	9	0	0	0	0	13	0	1	1	11	1
Middlesex	22	46	5	1	501	3,519	788	100	0	1	0	0	137	34	41	34	521	3
Nantucket	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—
Norfolk	1	9	0	0	180	943	204	44	1	0	0	0	46	8	11	12	92	0
Plymouth	0	4	1	1	80	323	60	9	1	2	1	0	32	13	6	11	68	8
Suffolk	5	315	31	0	1,085	2,807	6,682	66	1	20	3	0	552	45	534	241	2,075	1
Worcester	34	403	76	0	237	1,323	352	48	38	155	30	3	93	100	23	23	115	2
Totals	96	1,267	219	2	2,957	12,482	9,196	393	54	190	51	3	1,262	311	710	413	3,723	22
Combined Totals	1,584				25,028				300				2,695				3,723	22

Totals disposed of all kinds—33,352.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

County	CIVIL CASES													
	Table 7 Cases Triable i. e. at Issue and Awaiting Trial and not Marked Inactive													
	Jury				Non-Jury				Triable but Enjoined				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	41	104	31	18	29	0	2	11	0	0	0	0	9	0
Berkshire	19	90	20	5	19	0	5	0	0	0	0	0	22	0
Bristol	207	721	232	18	40	1	6	10	3	39	0	0	40	0
Dukes	0	5	1	0	0	0	0	0	0	0	0	0	0	0
Essex	415	1,258	551	67	114	64	64	19	2	55	4	0	149	0
Franklin	12	53	13	9	7	1	0	5	2	8	0	4	28	0
Hampden	308	1,489	785	84	114	4	16	12	0	34	0	0	254	1
Hampshire	24	78	20	17	9	0	1	4	0	1	0	0	11	0
Middlesex	435	3,709	1,072	80	184	15	12	32	2	280	0	0	332	0
Nantucket	4	2	1	—	—	—	—	—	—	—	—	—	—	—
Norfolk	166	795	247	36	58	3	24	16	0	10	0	0	85	1
Plymouth	118	295	90	20	29	11	8	21	0	7	0	0	114	2
Suffolk	1,432	3,341	6,383	85	740	46	515	165	13	543	60	0	1,187	0
Worcester	439	2,119	744	64	130	110	41	14	1	138	1	0	100	0
Totals	3,620	14,059	10,190	503	1,473	255	694	309	23	1,115	65	4	2,331	4
Combined totals	28,372				2,731				1,207					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

County	CIVIL CASES									
	Table 8 — Cases Remaining Undisposed of Including Cases Marked Inactive									
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	77	132	36	26	52	0	7	12	55	0
Berkshire	28	113	28	7	23	0	5	6	56	0
Bristol	380	1,004	353	39	125	12	35	31	417	0
Dukes	2	5	3	0	11	0	1	2	4	0
Essex	446	1,359	577	70	150	71	68	20	262	0
Franklin	36	65	15	12	11	5	1	18	53	0
Hampden	446	1,728	880	91	191	21	28	21	467	4
Hampshire	48	122	34	23	25	3	3	5	74	0
Middlesex	502	3,796	1,197	97	208	30	51	42	565	3
Nantucket	15	—	—	—	—	—	—	—	—	—
Norfolk	371	1,056	429	83	129	18	47	50	278	1
Plymouth	175	362	120	31	57	35	14	25	193	23
Suffolk	2,024	3,804	8,295	125	1,321	52	1,427	511	3,487	1
Worcester	504	2,248	853	81	178	151	78	47	251	0
Totals	5,054	15,794	12,820	685	2,481	398	1,765	790	6,162	32
Combined totals	34,353				5,434				6,162	32

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

CIVIL CASES

Table 9 — CASES MARKED INACTIVE IN PREVIOUS YEARS

COUNTY	JURY				NON-JURY				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	28	24	1	6	12	0	4	1	19	0
Berkshire	6	1	0	0	6	2	4	0	23	0
Bristol	86	65	31	12	38	6	5	9	118	0
Dukes	2	0	2	0	4	0	1	2	1	0
Essex	20	0	9	1	11	1	3	1	22	0
Franklin	20	8	2	0	1	4	1	3	16	0
Hampden	109	127	60	3	50	12	7	1	106	1
Hampshire	10	12	6	2	8	3	2	0	27	0
Middlesex	30	29	31	4	4	0	8	3	227	2
Nantucket	—	—	—	—	—	—	—	—	—	—
Norfolk	114	92	76	28	30	14	6	11	59	0
Plymouth	41	43	21	4	19	10	6	4	56	19
Suffolk	257	0	1,293	37	313	0	732	202	1,781	0
Worcester	11	7	11	1	1	0	0	0	0	0
Totals	734	408	1,543	98	497	52	779	237	2,455	22
Combined totals	2,783				1,565					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

County	CIVIL CASES									
	Table 10	CASES MARKED INACTIVE DURING THE YEAR								
	JURY				NON-JURY				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	10	7	2	1	8	0	2	1	9	0
Berkshire	0	0	0	1	0	0	0	0	0	0
Bristol	24	27	17	2	15	1	1	0	52	0
Dukes	0	0	0	0	1	0	0	0	2	0
Essex	8	3	4	0	4	0	0	0	5	0
Franklin	4	0	0	3	1	0	0	2	2	0
Hampden	26	62	29	3	27	2	5	2	88	0
Hampshire	9	10	1	2	5	3	0	1	13	0
Middlesex	7	11	14	1	4	0	1	0	9	0
Nantucket	—	—	—	—	—	—	—	—	—	—
Norfolk	40	51	45	8	8	1	3	2	27	0
Plymouth	15	16	9	7	9	14	0	0	22	1
Suffolk	121	0	239	7	108	0	90	54	503	0
Worcester	12	10	17	3	8	1	2	3	17	0
Totals	276	197	377	38	198	22	104	65	749	1
Combined totals	888				389					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1939—*Continued*

County	CIVIL CASES										Table 12	
	Table 11 — Inactive Cases Dismissed During Year										Number of Days in which Court Sat	
	Jury				Non-Jury				Equity	Divorce and Nullity	Jury	Non-Jury Including Equity and Motion Session
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	11	9	3	1	6	1	1	0	7	0	19½	4
Berkshire	1	1	0	0	6	2	4	0	20	0	37	16
Bristol	27	38	13	2	17	6	0	12	47	0	137	26
Dukes	0	0	0	0	2	0	0	0	0	0	2	0
Essex	2	0	2	0	0	0	0	0	5	0	266	88
Franklin	1	4	1	1	1	0	0	0	7	0	25	4
Hampden	82	88	44	6	43	7	11	10	112	1	182	62
Hampshire	4	1	10	1	10	0	0	0	5	1	29½	4½
Middlesex	184	50	140	28	46	3	9	8	217	1	583	171
Nantucket	—	—	—	—	—	—	—	—	—	—	2	—
Norfolk	73	75	38	13	23	5	7	5	39	0	166	14
Plymouth	31	10	16	3	11	8	4	1	34	6	88½	21½
Suffolk	132	0	425	28	181	0	207	129	761	1	1,045	1,146*
Worcester	2	1	2	1	0	2	0	0	0	0	280	80
Totals	550	277	694	84	346	34	243	165	1,254	10	2,862½	1,637
Combined totals	1,605				788							

* Including Pre-trial Sessions.

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, 1938

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Ints. Filed		Marked for		Trial List				Findings		Appellate Division										
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trail Ordered
Contract	16,923	309	8,534	373	1,278	—	—	—	—	1,078	571	829	252	139	59	14	6	—	52	52	40	3	1	7	1
Tort	11,872	5,121	728	4,974	2,504	—	—	—	—	1,503	949	855	693	92	51	4	1	—	34	31	26	2	—	2	1
Contract or Tort	517	18	54	122	117	—	—	—	—	100	80	—	56	22	14	—	1	—	18	13	10	—	1	2	—
All Others	1,045	—	501	4	6	—	—	—	—	178	26	149	25	4	—	—	—	—	—	—	—	—	—	—	—
Totals	30,357	5,448	9,817	5,473	3,905	13,744	15,017	320	2,032	2,859	1,626	1,833	1,026	257	124	18	8	—	104	96	76	5	2	11	2

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

SUMMARY, 1938

	Motions	Appellate Division—*Con.*				Appeals to Superior Civil Court	Defendants' Judgments					Neither Party by Agreement	Plaintiffs' Judgments						Executions Issued	Removed to United States District Court
		Cases Consolidated Under Stat. 1935 C. 483	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Petitioned	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defendants' Judgments		Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments	
Contract	7	—	17	4	2	—	—	163	87	165	62	477	251	9,458	420	409	1,751	12,038	$2,896,771.41	$240.63	11,984	—
Tort	27	46	12	2	1	1	—	579	208	485	42	1,314	263	—	346	509	3,698	4,553	960,250.43	210.90	1,106	1
Contract or Tort	6	—	4	—	—	1	—	24	20	36	—	80	3	—	—	—	—	—	—	—	—	—
All Others	—	—	—	—	—	—	8	38	20	5	2	65	2	614	132	17	58	821	144.50	—	627	—
Totals	40	46	33	6	3	2	8	804	335	691	106	1,936	519	10,072	898	935	5,507	17,412	$3,857,166.34	$221.52	13,717	1

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, January 1, 1939 through September 30, 1939, inc.

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Intts. Filed		Marked for		Trial List				Findings		Appellate Division															
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trial Ordered
Contract	11,783	199	5,897	187	659	—	—	—	—	730	401	553	220	65	29	10	3	—	24	19	15	—	3	1	—
Tort	7,767	3,476	350	3,403	1,508	—	—	—	—	1,112	734	572	520	45	21	5	6	—	29	23	22	1	—	—	—
Contract or Tort	304	15	20	65	51	—	—	—	—	83	77	—	38	18	8	4	1	—	5	3	3	—	—	—	—
All Others	737	—	395	1	8	—	—	—	—	119	15	110	21	—	—	—	—	—	—	—	—	—	—	—	—
Totals	20,591	3,690	6,662	3,656	2,226	10,340	10,338	208	1,227	2,044	1,227	1,235	799	128	58	19	10	—	58	45	40	1	3	1	—

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, January 1, 1939 through September 30, 1939, inc.

	Appellate Division—Con.							Defendants' Judgments						Plaintiffs' Judgments							
	Motions	Cases Consolidated Under Stat. 1935 C. 483	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Perfected	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Appeals to Superior Civil Court	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defendants' Judgments	Neither Party by Agreement	Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments	Executions Issued
Contract	9	—	7	2	2	2	—	93	75	145	58	371	228	6,660	254	299	1,187	8,400	$2,158,361.65	$256.95	8,606
Tort	23	38	6	—	—	—	—	435	132	388	74	1,029	283	10	246	326	2,290	2,872	467,547.04	162.79	836
Contract or Tort	—	—	—	—	—	1	—	18	6	32	2	58	2	—	—	—	—	—	—	—	—
All Others	—	—	—	—	—	—	—	15	10	11		38	1	411	94	16	42	562	—	—	444
Totals	32	38	13	2	2	3	3	561	223	576	136	1,496	514	7,081	594	641	3,519	11,834	$2,625,908.69	$221.90	9,886

MUNICIPAL COURT OF THE CITY OF BOSTON
SMALL CLAIMS
Summary, 1938

	Actions Entered	Reported as settled out of Court	Amount of Plffs.' Claims	Notice Mailed to Defts.	Notices Returned. Acceptance Refused	Notices Returned. Unable to Locate	Notice to Plffs.	Counter-Claims or Set-Offs	Amount of Counter-Claims or Set-Offs	Answers		Settled in Court before Hearing	Hearings	Settled in Court after Hearing	Reserved	Dismissals	Transferred for Trial	Removed to Superior Court	Referred to Appellate Division
										Defendants	Plaintiffs								
Contracts	1,184	101	$27,828.54	1,184	—	60	4	4	$81.94	366	3	3	366	1	5	—	—	2	—
Tort	250	24	7,080.77	250	—	6	3	3	68.56	218	1	1	218	1	1	—	—	3	—
Totals	1,434	125	$34,909.31	1,434	—	66	7	7	$150.50	584	4	4	584	2	6	—	—	5	—

	Judgments								Neither Party	Counter-Claims Dismissed	Counter-Claims Disallowed	Plffs.' Exons.—Original	Defts.' Exons.—Original
	Entered on Defaults	Entered on Non-Suits	Entered on Hearings	Total Plffs.' Judgments	Amount Plffs.' Judgments	Total Defts.' Judgments	Amount Defts.' Judgments	Judgments Vacated					
Contracts	430	18	367	693	$15,221.14	122	—	5	2	1	3	444	—
Tort	1	8	205	134	2,674.99	80	—	1	2	—	2	151	—
Totals	431	26	572	827	$17,896.13	202	—	6	4	1	5	595	—

MUNICIPAL COURT OF THE CITY OF BOSTON
SMALL CLAIMS
SUMMARY, JANUARY 1, 1939 THROUGH SEPTEMBER 30, 1939, INC.

	Actions Entered	Reported as settled out of Court	Amount of Plffs.' Claims	Notice Mailed to Defts.	Notices Returned, Acceptance Refused	Notices Returned, Unable to Locate	Notice to Plffs.	Counter-Claims or Set-Offs	Amount of Counter-Claims or Set-Offs	Answers		Settled in Court before Hearing	Hearings	Settled in Court after Hearing	Reserved	Dismissals	Transferred for Trial	Removed to Superior Court	Referred to Appellate Division
										Defendants	Plaintiffs								
Contracts	914	85	$19,773.17	914	—	52	7	7	$213.50	249	2	7	249	—	—	—	3	—	—
Tort	219	13	5,887.20	219	—	2	7	9	192.78	139	3	—	139	—	—	—	—	—	—
Totals	1,133	98	$25,660.37	1,133	—	54	14	16	$406.28	388	5	7	388	—	—	—	3	—	—

	Judgments								Neither Party	Counter-Claims Dismissed	Counter-Claims Disallowed	Plffs.' Exons.—Original	Defts.' Exons.—Original
	Entered on Defaults	Entered on Non-Suits	Entered on Hearings	Total Plffs.' Judgments	Amount Plffs.' Judgments	Total Defts.' Judgments	Amount Defts.' Judgments	Judgments Vacated					
Contracts	396	12	249	591	$12,837.93	66	—	2	2	1	1	405	—
Tort	6	7	139	101	1,587.57	51	—	—	—	2	5	104	—
Totals	402	19	388	692	$14,425.50	117	—	2	2	3	6	509	—